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REPORT

OF THE

TRIAL OF ABNER ROGERS, JR.

INDICTED FOR THE MURDER OF

CHARLES LINCOLN, JR.

LATE WARDEN OF THE MASSACHUSETTS STATE PRISON;

BEFORE THE SUPREME JUDICIAL COURT OF MASSACHUSETTS;

HOLDEN AT BOSTON,

ON TUESDAY, JANUARY 30, 1844.

BY

GEORGE TYLER BIGELOW AND GEORGE BEMIS, ESQRS.,

COUNSEL FOR THE DEFENDANT.

BOSTON:

CHARLES C. LITTLE AND JAMES BROWN.

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BOSTON:

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NOTE BY THE REPORTERS.

THE interest taken in the subject of insanity as a defence to criminal prosecutions, it is thought, renders the present trial sufficiently important to deserve a full and accurate report. Accordingly the best exertions (in the absence of a short-hand *verbatim* report,) have been made, to exhibit a full development of the case in its legal and medico-scientific bearings. The testimony, as afforded by our own copious minutes of the trial, has been carefully compared with the notes taken by the Chief Justice, (obligingly afforded for the purpose) and a statement of the law as propounded by the Bench, has been obtained from the same source.

The State's Attorney has also favored us with his opening and closing remarks, so far as he could write them out from memory after the trial.

As a case involving the issue of feigned or real insanity, we believe the present the most interesting on record, certainly in English or American jurisprudence. As one of transient duration, also, (supposing nothing further is heard of it,) it deserves, perhaps, to be noted for the benefit of medical science.

TRIAL OF ABNER ROGERS, JR.

AT the March Term of the Supreme Judicial Court, held by adjournment at Boston, within and for the counties of Suffolk and Nantucket, on the 27th day of June, A. D. 1843, the Grand Jury returned the following indictment against Abner Rogers, Jr.

Commonwealth of Massachusetts.

SUFFOLK AND NANTUCKET, TO WIT :

At the Supreme Judicial Court of the commonwealth of Massachusetts, begun and holden at Boston, within the county of Suffolk, and for the counties of Suffolk and Nantucket, on the first Tuesday of March, in the year of our Lord one thousand eight hundred and forty-three, and thence continued by lawful adjournments from time to time, until the twenty-seventh day of June, in the same year, and being in session on the said twenty-seventh day of the same June.

The jurors for the said commonwealth of Massachusetts, on their oath present, that Abner Rogers, the younger of that name, late resident at Charlestown, in the county of Middlesex, and commonwealth aforesaid, laborer, and a convict and prisoner, under a sentence to imprisonment and hard

labor, in the State Prison of said commonwealth, situated in Charlestown, in said county of Middlesex, (which prison, and the precincts thereof, by force of the statute in such case made and provided, are deemed by law, for the purpose of all judicial proceedings concerning crimes and offences committed within said prison and its precincts, to be within and a part of the county of Suffolk, as well as the county of Middlesex, and which sentence was lawful, unreversed, unexpired, and in full force,) with force and arms, on the fifteenth day of June, in the year of our Lord one thousand eight hundred and forty-three, at the State Prison aforesaid, and within the precincts thereof, at Charlestown aforesaid, and in the county of Suffolk, and within the criminal jurisdiction of the court, as aforesaid, by force of said statute, in and upon one Charles Lincoln, the younger of that name, late of said Charlestown, in the said county of Middlesex, Esquire, he the said Lincoln then and there being in the peace of God, and of said commonwealth, and also then and there being the warden of said State Prison, lawfully appointed and qualified, and being then and there in the due and lawful exercise and discharge of the duties of his said office of warden, as aforesaid, unlawfully, feloniously, wilfully, and of his malice aforethought, an assault did make; and that he, the said Abner Rogers, with a certain knife, commonly called a shoe-knife, of the value of twenty cents, which he, the said Rogers, then and there had and held in his right hand, in and upon the back and neck of him, the said Charles Lincoln, then and there warden, as aforesaid, did, then and there in said prison, and within the precincts thereof, at Charlestown, aforesaid, in said county of Suffolk, as aforesaid, and within the criminal jurisdiction of this court, on said fifteenth day of said June, with force and arms, unlawfully, feloniously, and wilfully, and of his malice aforethought, him the said Charles Lincoln, three times strike,

thrust, stab, penetrate and wound ; giving unto said Lincoln then and there, with the knife aforesaid, in and upon the back, neck, and throat of him, the said Lincoln, two mortal wounds ; to wit, — one mortal wound, of the length of two inches, of the breadth of one inch, and of the depth of three inches, in and upon the back of him, the said Lincoln, near the shoulder blades and the spine of his back ; and one other mortal wound in and upon the left side of the neck and throat of him, the said Lincoln, of the length of three inches, of the breadth of one inch, and of the depth of three inches, of which said mortal wounds he, the said Charles Lincoln, then and there in the precincts of said prison, in the county of Suffolk, as aforesaid, and within the criminal jurisdiction of this court, instantly died.

And so the jurors aforesaid, on their oath aforesaid, do say and present, that he, the said Abner Rogers, him, the said Charles Lincoln, then and there on the said fifteenth day of said June, in the State Prison aforesaid, and within the precincts thereof, at Charlestown aforesaid, in the county of Suffolk, as aforesaid, and within the criminal jurisdiction of this court, did, in manner and form aforesaid, unlawfully, feloniously, wilfully, and of his malice aforethought, kill and murder, against the peace of said commonwealth, and contrary to the form, force, and effect of the statute in such case made and provided.

This is a true bill,

CHARLES B. SHAW,

Foreman of the Grand Jury.

SAMUEL D. PARKER,

Attorney of said Commonwealth, in and for the County of Suffolk.

On the same day the prisoner was arraigned, and pleaded Not Guilty ; and, being inquired of by the court, if he had any counsel, replied that he had none, and wished for

time to see his father and friends. Accordingly, a few days' postponement was granted him, for this purpose. On Saturday, July 1st, he was again brought into court, and being asked by the chief justice if he had procured any counsel, replied that he was unable to, and requested that some one or more might be named for him by the court. Being informed that he had the privilege of naming two himself, he requested that RUFUS CHOATE and GEORGE BEMIS might be assigned him. Mr. CHOATE being present in court, stated that the nature and pressure of his professional and other engagements, positively forbade his complying with the prisoner's request, much as he was disposed to give him any aid in his power. The prisoner then named RICHARD FLETCHER, in lieu of Mr. CHOATE. But the chief justice remarked, that Mr. Fletcher was then absent from the city, and that he was sure the state of his health would not permit him to take part in the case.

The court then assigned GEORGE T. BIGELOW as an associate with Mr. BEMIS, and fixed the trial for Tuesday, the 24th of that month.

The trial accordingly took place at that time, Chief Justice SHAW and judges WILDE and HUBBARD being present. It lasted four days, till Friday of the same week, and resulted in a disagreement of the jury.

The case was then postponed till the November term of the same court; and Tuesday, the second day of January, 1844, was specially assigned for hearing it. At that time the prisoner's counsel moved for a further postponement, in consequence of the temporary illness of DR. WOODWARD, a material witness. A postponement was accordingly granted till Tuesday, the 30th of the same month, when the court, consisting of C. J. SHAW and judges WILDE and DEWEY came in, and at 9 A. M. the trial commenced.

The clerk, George C. Wilde, Esq., was about to call the

traverse jurors, when Mr. BEMIS inquired of the court, if the same practice would be adhered to, which had been pursued on the former trial in regard to challenges, viz., of requiring the prisoner to challenge peremptorily before the court interrogated the juror as to having formed an opinion, or having a bias, or as to having conscientious scruples in regard to capital punishment. He remarked that the opposite course had been adopted in the trial of *Francis Knapp*, reported in 9 Pick. 496. and that the effect of requiring the prisoner to challenge in the first instance, was to very much abridge and impair his statute privilege; since the answers to the interrogatories of the court, might, of themselves, show that the juror was unfit to sit in the case, and therefore the prisoner would throw away, or lose, his challenge upon him.

The court, after some consultation, decided that the same course should be pursued as before, viz., that the right of peremptory challenge, if used at all, must be used in the first instance, before the juror was interrogated as to his bias or scruples. The Chief Justice remarked, that *Knapp's* case, referred to, was decided before the Revised Statutes; and that the new provision introduced into them in regard to conscientious scruples of jurors against convicting capitally, required this construction.

The clerk then proceeded to call the list; the Chief Justice inquiring of each juror, who was not challenged in the first instance, if he had any conscientious scruples against rendering a verdict of guilty, in a case punishable with death, or, if he were sensible of any bias, or had formed any opinion, in regard to this particular case.

A large number of challenges having been made and the list exhausted, without affording but ten jurors, the prisoner elected to withdraw two of his challenges, and the panel was finally completed as follows:

John C. Proctor, Foreman, Charles Appleton, Zephaniah

Bassett, David Choate, John Eaton, Enoch A. Hobart, Aaron Leman, George W. Mansur, Stillman Messer, William G. Pierce, Albert Plimpton, and Francis C. Whiston.

The indictment having been read, Mr. PARKER, at twenty-seven minutes past ten, opened the case for the government, substantially as follows :

GENTLEMEN OF THE JURY,

Under the directions of the constitution and laws of this commonwealth, establishing the trial by jury, and by the selection of the prisoner at the bar, you are this day separated from the rest of your fellow-citizens, and one of the most important duties that can be performed by men in civil society, has devolved on you — the painful and responsible task of deciding the issue now joined, between the commonwealth and the unhappy man whom you have in charge — an issue involving the life or death of the prisoner. The same constitution of government, which guarantees to every citizen a jury trial, contains a description of the objects and design of rightful government. It declares, that “the end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying, in safety and tranquillity, their natural rights, and *the blessings of life.*”

To secure these blessings, wise laws are made, and the public peace, and individual safety depend on the observance of those laws. But, such are the temptations of life, such the rude impulses of passion, such the depravity of human nature, that no system of laws will be obeyed, unless punishment be provided and inflicted for their violation. The chief design of punishment is the prevention of crime, by exhibiting an example of its consequences, so painful as to deter others from a repetition of the offence ; where this can

be done, and the moral reformation of the criminal also be effected, humane legislators endeavor to accomplish both objects. But in the judgment of all civilized communities, there are some crimes so dangerous to the public, so injurious to individuals, so malicious and atrocious in their character and degree, that the life of the culprit is decreed forfeited, and, after a proper season for repentance and religious exercises is allowed, death is inflicted upon the criminal for the safety of all other men, and the security of all other lives. In cases of murder, the guilty are not executed from any principle of revenge or retaliation, but that no more murders shall be committed, that other men's lives may be protected by law, that all other evil-disposed persons may be deterred, by the extreme severity of the punishment, from the commission of a similar crime. Hence criminal laws and courts of criminal jurisdiction, are the balance-wheels, in the complicated machinery of human society, and are the moral and effectual power which restrain the other parts from going wrong, and doing wrong. The duty, then, of applying and enforcing the laws of a nation, is one of the most important which men can discharge; and no citizen has a right to shrink from such a duty, when called upon by lawful authority, as you now are, to sit in judgment between the accused and his accuser; and to decide with impartiality, and religious adherence to the law and the testimony, the important question of the guilt or innocence of the party on trial. The grand inquest for the body of this county, upon their oath, make the charge; the prisoner denies it, and puts himself on God and his country for a deliverance; and you, under the providence of that God, are that country, who are to decide his fate; and you are bound, by the obligations of conscience and the law of the land, imposing your oath, to give righteous judgment. You are to understand and consider the accusation, the nature of the crime charged, the

evidence by which it is proved, the defence of the prisoner, and the principles of law which are to govern you in your decision. In opening this solemn case to you, I shall speak upon each of these subjects, and you will have the instructions of the learned judges who preside over this important trial, to guide you in the path of duty.

By the constitution, which is the supreme law in this commonwealth, it is provided, that no man shall be put on trial for an offence, until the same be fairly, fully, and substantially stated to him. Great accuracy is therefore required in drawing indictments, especially in capital cases. The accusation is to be precise, definite, certain, unequivocal, and to afford the prisoner such information as will enable him to prepare his defence. Such an indictment you have before you for trial. It charges the prisoner with having committed the atrocious crime of wilful murder, in killing Charles Lincoln, Jr. the warden of the state prison at Charlestown, on the fifteenth day of June last, in the manner and form specially set forth. Though Charlestown is in the county of Middlesex, yet the precincts of the state prison are for the purposes of criminal trials, both in the county of Suffolk and county of Middlesex, by the express provisions of the Revised Statutes, chap. 144, sect. 43, page 797.

Such is the accusation; but what is the nature of the crime of murder? This is not defined by any statute law, and we must go to the common law for the definition. The evidence of the common law is found in the decisions of the courts for a long period of time. On this occasion, I shall state to you the nature of the crime of murder, in the comprehensive and accurate language of the present learned Chief Justice of this commonwealth, which is in conformity with the rules of the common law for many centuries. "*Murder*," said the Chief Justice, (in a charge to the grand jury, in Essex county,) "*is the unlawful killing of any rea-*

sonable creature in being, by a person of competent understanding to distinguish between right and wrong, with malice aforethought, express or implied." This definition makes the crime consist of four elements.

1. An unlawful killing, that is, an inexcusable, unjustifiable, felonious killing.

2. The act must be done with malice, express or implied.

3. The perpetrator of the crime must have been of competent understanding to distinguish between right and wrong.

4. The person slain, must have been "a reasonable creature in being." These four particulars are fully alleged in this indictment.

The first and most material part of this accusation is, that the prisoner killed Mr. Lincoln. This fact will be proved beyond all controversy. It will not even be denied by the learned counsel of the defendant. Nor will the killing be justified for any reason, nor alleged to be lawful, nor excused upon any of the common grounds of excuse. And the killing was effected in the manner, and by the instrument described in the indictment. The evidence will be entirely satisfactory and conclusive on this point.

The next circumstance required to be proved, is, that the killing, thus unlawful, was done "with malice aforethought, express or implied." — "Malice is *express*," says Chief Justice Parsons, in Selfridge's Trial, page 5, "where there was a premeditated intention to kill. Malice is *implied* when the killing is attended with circumstances which indicate great wickedness and depravity of disposition, a heart void of social duty, and fatally bent on mischief."

Malice is implied, says Mr. East,¹ from any deliberate act, however sudden. And, he adds, (225) he who wilfully and deliberately does any act which apparently endangers another's life, and thereby occasions his death, shall, unless he clearly

¹ 1 East's Pleas of the Crown, 215.

prove the contrary, be adjudged to kill him of malice pre-pense.

Malice, says judge Addison, quoted and approved by judge Rush, (trial of Richard Smith in Philadelphia, for murder of captain John Carson, May 1816, page 83,) is a deliberate, wicked, vindictive temper, regardless of social duty, and bent on mischief. When a wilful killing is proved, the law presumes malice, unless the killer proves the contrary. (page 84.) Deliberate killing, without passion, whatever may have been the provocation, is murder. In page 231, it is said, the law does not fix the *time* of such deliberation. If the defendant has time to think, said judge Rush, in that trial, (page 231,) and did intend to kill, for a *minute*, as well as for an hour or a day, it is a deliberate, premeditated killing, constituting murder. To deliberate is to reflect with a view to make a choice, and a reflection but for a minute is a sufficient deliberation. No time is too short for a wicked man to frame in his mind a scheme of murder, and to contrive the means of accomplishing it.

If a man, says chief justice Parker, in Phillips's Trial, 45, kills another suddenly with slight or no provocation, the law implies malice, (and so is 4 Black. Com. 200) ; and solicitor general Davis said in that trial, (37,) evidence of malice arises from the nature of the weapon with which the mortal stroke is given. To this effect see also 1 Hale, 454 ; Kel. 64.

Foster says,¹ malice is implied, where an officer is killed in the lawful discharge of his duty. Lord Hale expresses it rather more strongly : "To kill an officer in the faithful discharge of his duty, is murder, and the law will imply the *highest degree of malice.*" (1 P. C. 465.)

Malice may also be inferred from the mode in which the weapon was obtained and selected, especially if it was the best choice for the tragic purpose : the manner, too, in which the weapon was used, the repetition of dangerous wounds, the

¹ Crown Law, 380.

choice of vital spots for those wounds, and the perseverance in the assault until death be produced, these are all circumstances indicative of malice. Deliberate malice may also be seen in the mode of attack, the time selected for it, when the victim is off his guard, when he has no opportunity for self-defence, when stabs are given from behind ; — pursuing a man, selecting him from among others, advancing on him in a studied, circuitous manner, which could not be perceived, intercepted or prevented, also show calculation, deliberation, and malice.

Finally, if there was cause, real or imaginary, for resentment, if the purpose of killing was long harbored, if no motive but revenge can be assigned for the fatal deed, if revenge was harbored, and if previous threats have been made, those facts would be evidence of express malice.

Such being the nature of express and implied malice, I expect to give you evidence of both, on this melancholy occasion. The killing and malice being proved, I am, *thirdly*, to remind you that the offence must be committed by an agent of competent understanding, to distinguish between right and wrong. *Nemo est reus, nisi mens sit rea*. Idiocy and insanity are good grounds of defence in a capital trial, because then the mind cannot have been guilty.

Who then is this prisoner, Abner Rogers, Jr. ? and at the time of his killing Mr. Lincoln, was he a person of *such* competent understanding ? His history is easily told.

After giving an outline of his history, Mr. Parker said, I suppose it will further appear, in addition to the common presumption that every man is a rational, moral and accountable agent, that the prisoner possesses shrewdness, common capacity, no defect of intellect, and has never been deemed or treated as insane or idiotic by his family, his employers, his physician, or the officers of the prison. Under these circumstances, and having some intimation what the learned counsel of the prisoner will urge in his defence, it may be proper to

consider, somewhat at length, what is the meaning, as applicable to him, of the words, "of competent understanding to distinguish between right and wrong," used in the definition of murder. This I am now induced to do, that the learned counsel of the prisoner may have a reference to such authorities in the law, as I shall rely upon, as bearing on this question.

There are some rules and decisions respecting soundness of mind in civil cases relating to wills, deeds, contracts, &c., which establish a different criterion from that which decides criminal responsibility; but we are now to consider only what excuses crimes.¹

Idiocy is a defect of the understanding, from the moment of birth, or, it is subsequently brought on by accident, sickness or old age.²

"*Insanity* is a disease of the brain which causes the patient, while awake, to mistake the phantoms and operations of imagination for realities, which, consequently, become the motives of his discourse and actions, while at the time there is an absence of any bodily disorder that can account for the phenomena."

The best definition of *Insanity* I have found is in Sir Alexander Crichton's Commentaries, page 165. Insane persons are arranged into classes:

1. Maniacs, who are under a phrensy.
2. Lunatics, having lucid intervals.
3. Melancholics, subject to constant depression.
4. Monomaniacs, under a delusion upon a particular subject.
5. Demented, deprived of mind by grief, sickness, accidents, or old age.³

Lord Coke says, "many times the Latin word expresses the true meaning, and calleth him not, *amens*, *demens*,

¹ See Chitty's Medical Jurisprudence.

² Co. Litt. 247.

³ Chitty's Medical Jurisprudence, 345.

furiosus, lunaticus, fatuus, stultus, or the like, but NON COMPOS MENTIS.”¹

Bracton says, *furiosus non intelligit quod agit, et animo et ratione caret, et non multum distat a brutis*.²

Lord Hale observes correctly,³ that “it is very difficult to define the invisible line that divides perfect and partial insanity, but it must rest on circumstances duly to be weighed and considered by judge and jury, lest on the one side there be a kind of inhumanity towards defects of human nature, or on the other side too great an indulgence given to crimes.”

“The most difficult cases,” (said Erskine, in Hadfield’s trial,) “are where reason is not wholly driven from her seat, but distraction sits down upon it along with her, holds her trembling upon it, and frightens her from her propriety.”⁴ Such patients are victims to *delusion* of the most alarming description, which so overpowers the faculties and usurps so firmly the place of *realities* as not to be dislodged and shaken by the organs of perception and sense. *Delusion*, therefore, where there is no phrensy or raving madness, is the true character of insanity, and where it cannot be predicted of a man standing for life or death for a crime, he ought not to be acquitted.”

Some rules about freeing a lunatic from criminal responsibility may be found in 1 Collinson on Lunacy, 473, 474, 477.

“There must be an absolute dispossession of the free and natural agency of the human mind.

The prisoner must have been incapable of distinguishing between good and evil, and of *comprehending the nature of what he was doing*.

Being a lunatic *before* or *after* the act is not enough; his madness must be complete and absolute *at the moment* when the offence was committed.”

¹ Co. Litt. 247, a.

² Lib. 5, 420, b.

³ 1 P. C. 29, 30.

⁴ Quoted in Chitty’s Med. Jur. 360.

Cooper expresses the same rule, "the insanity must be distinct and manifest at the time the crime was committed."¹

So Male says, "where no insanity is proved, and there has been none previously existing, where the delinquent has acted from *facts* and *existing* circumstances, the law does not protect him."²

Shelford, from a number of adjudged cases, thus deduces the rule of law.³ "If a person, liable to partial insanity, which only relates to particular subjects or notions, upon which he talks and acts like a madman, still has as much reason as enables him to distinguish between right and wrong, he will be liable to that punishment which the law attaches to his crime." He cites Lord Ferrer's case, 10 Howell State Trials, 947; Arnold's case, 16 Howell State Trials, 764; Parker's case, 1 Collinson on Lunacy, 477; Bellingham's case, 1 Collinson on Lunacy, 636; Offord's case, 5 Carr. and Paine, 168; Bowler's case, 1 Collinson, 673; and 54 Annual Register, 309.

Sir John Mitford said, in Hadfield's trial,⁴ "because there is a natural impression on the mind of man of the distinction between good and evil, which never entirely loses hold of the mind, whilst the mind has any capacity whatever to exert itself, nothing but total and absolute debility deprives the mind of any man of that. If conscious of the act as the result of design and contrivance, and of the consequences of the act, is there not a moral sense, which indicates criminal responsibility?"

The true criterion of insanity, said Sir John Nichols, is *delusion*, and he cites Locke on the Human Understanding, book 2, ch. 11, § 13.⁵

"Dementation arising from unruly passion is no excuse."⁶

¹ Cooper's Med. Jur. 381.

² Cooper's Med. Jur. 255.

³ Shelford on Lunacy, 458.

⁴ 27 Howell's State Trials, 1290.

⁵ In *Dew v. Clark*, 3 Addams, 90, 91.

⁶ *Prenovi's Case*, 3d City Hall Recorder, 123.

One of the best and latest writers on medical jurisprudence, Mr. Chitty, (page 345,) thus expresses the rule of law. "The true test of insanity, where there is no phrensy or raving, is the absence or presence of *delusion*, and delusion exists whenever an individual once conceives something extravagant to exist, which has no existence, and when he is incapable of being reasoned out of that absurd conception. In criminal cases, therefore, the question is simple, adapted to the comprehension of every juryman, "whether, at the time the act was committed, the prisoner was incapable of judging between right and wrong, and did not then know that the particular act was an offence against the law of God and nature."

He adds, "the law presumes the competency, and therefore the question is always presented to a jury upon the negative, which must be *established* on the part of the prisoner, the burthen of proof is on him."

Mr. Chitty is entirely supported by Mr. Erskine, whom he quotes, and I desire no better rule for your guidance, than that which Erskine in Hadfield's trial, the prisoner's counsel, stated to be the true rule.

"To deliver a lunatic from responsibility to criminal justice, said he, above all in a case of atrocity, the relation between the *disease* and the *act* should be apparent; the *delusion* and the *act* must be connected. I cannot allow the protection of insanity to a man, who exhibits only *violent passions* and *malignant resentments*, acting upon *real* circumstances, who is impelled to evil from no morbid delusion, but who proceeds upon the ordinary perceptions of the mind."

It seems, therefore, where the act may be justly ascribed to malignant motives, and not to the dominion of disease, when the party was acting upon *actual* grounds and not under any delusion, and was instigated to revenge founded on *natural* facts, and not on any illusion, then criminal responsibility attaches.

Even a lunatic will be criminally responsible, if he knew he had no right so to revenge himself.¹ And the most humane superintendents of insane hospitals sometimes *punish* their patients on this very principle.

I am justified then, in telling you, that the burthen of proof of insanity in all cases is on the prisoner, he must establish the fact beyond a reasonable doubt ; and if at no other time, in no other place, on no other occasion, towards no other person, he manifested any insanity or want of competent understanding to distinguish between right and wrong, then clearer proof on his part is necessary than under other circumstances. I have now alluded to some rules of law upon this subject, which in the closing arguments will be more fully discussed.²

The fourth ingredient in the crime of murder is, that it must be the unlawful "*killing of any reasonable creature in being.*" And who was the person killed on this occasion ?—A man in full life, perfect health, of middle age, distinguished for vigor of mind and body, and selected for his virtues, integrity, firmness, prudence and capacity, to superintend one of the most difficult and important institutions of this commonwealth. On this head the evidence will be clear, satisfactory and conclusive, that the late Mr. Lincoln was such a person.

The accusation and nature of the crime having thus been explained, I am next to state to you a brief outline of the evidence I shall offer you. I will prove Mr. Lincoln's appointment as warden of the state prison, and read his commission as it describes his duties. Then I will offer you the record of the conviction and sentence of Abner Rogers, Jr. to that prison, and prove that he was under its discipline at the

¹ Rex v. Offord, 6 Carr. and Pa. 168.

² Refers to those which were cited in a former trial. Also the opinions of the English Judges to the House of Lords, in appendix to Winslow's Plea of Insanity, and Harlam on Medical Jurisprudence, 49.

time of the murder. The horrid tragedy will then be detailed to you by eye witnesses, and the events preceding, simultaneous, and subsequent, will be proved as having a material bearing upon the guilt or innocence of the prisoner. When this evidence is placed before you, the defence of the prisoner will be made by his counsel, and if it be such as I anticipate, it will become my duty, before the closing arguments are commenced, to rebut, if I can, such evidence as tends to support the defence, and call the attention of the counsel, the court, and the jury to those principles of law, which I think, should guide you in deciding the issue you have to try. One of the principal positions I shall endeavor to maintain, is, that mere unsoundness of mind does not always relieve from criminal responsibility; that there are degrees of insanity, some of which do, and others do not, excuse from punishment those who commit the crime of homicide, and that under the facts and circumstances of this case, the prisoner is rightfully punishable by law, and answerable penally for the crime of wilful murder. Your principal difficulty will be in establishing under the law and the evidence where the line of moral and legal responsibility separates crimes from acts which become innocent by reason of insanity. You will hear much said to you on both sides by the counsel, and finally will be aided by the instructions of the court on this delicate subject. To prevent surprise, I inform the learned counsel and the honorable court, that I rely upon all the cases and books cited by me in the former trial of this case, of which they took notes, but that for the present I shall contend that the law is rightly laid down by Lord Chief Justice Tindall's statement of the opinions of the English judges to the house of Lords, especially as I understood his honor, the chief justice of this court, substantially to have approved of the law as so stated.¹

¹ Read from the appendix of Winslow's Plea of Insanity.

But there is a question beyond all this, and that is, whether what shall be proved, on the part of the prisoner, demonstrates a case of *real* or *simulated* insanity. It is your province to decide;

1. Is there any insanity proved?

2. Is it real or simulated?

3. If real, was it to such extent as to excuse from criminal responsibility?

4. What is the criterion, or rule?

And there is a position I intend to take at this trial, which was not stated, or contended for, in the former trial, and I shall ask the court to give you special instructions on this point.

There are degrees of insanity, from very slight aberrations of reason, temporary in their nature, and easily controllable, to the most furious raving madness, permanent and uncontrollable. Criminal responsibility attaches to those very slight degrees; and the great difficulty is, to define the boundaries, or draw the line where accountability ends, and irresponsibility begins. These slight and temporary cases often produce a sudden and violent impulse, like a sudden gust of violent passion, and lead to acts of violence, like those produced under the influence of passion, upon an unexpected provocation, in a heat of blood. Now this sudden excitement rebuts the presumption of malice, in cases of homicide, and, in accountable agents, reduces the offence from murder to manslaughter. Manslaughter is an unlawful killing of a human being, without malice aforethought, committed in a transport of passion, heat of blood, &c. &c. Now, the impulses of the mind, partially deranged, are of various degrees; some controllable, and others uncontrollable. There may be cases where the impulse is controllable, and yet the excitement very great, like a sudden transport of passion; and a homicide committed under such an influence, may have all the characteristics of manslaughter, and may justify a jury

in returning such a verdict, under an indictment like this, for murder.

Mr. Winslow, at the close of his "Plea of Insanity," (97,) says, "I repeat I am not prepared to give an unqualified assent to the dogma, that in every case of mental derangement, without any reference to its degree or character, ought the person to be screened from the penalty awarded by the laws, for criminal offences." "Such a doctrine is as unphilosophical and untenable, as it is opposed to the safety and well-being of society." What, then, is the character of a homicide, committed by a person partially insane? If, upon a sudden impulse, controllable, but not controlled, and, if unattended with express malice, the crime is manslaughter; and I particularly ask the attention of the honorable court to this point, and after all the evidence in this case is laid before you, to instruct you in reference to it, and that it is competent for you to bring in a verdict of manslaughter, if the prisoner could control his actions, and was not governed by malice.

From the course of the defence at the former trial, and from seeing the superintendents of some insane hospitals in attendance, on the part of the prisoner, I am led to believe, that the opinions of some medical scientific men will be offered to you, to guide your judgment, in deciding upon the guilt or the innocence of the prisoner; I am, therefore, desirous you should understand the proper value and effect of such testimony, and for this purpose shall avail myself now, or at some other stage of this trial, of a very sensible commentary upon such evidence, by a medical author of the highest reputation among the learned of that profession, I mean Dr. Fobes, the editor of the British and Foreign Medical Review, for July, 1843, published a month after this crime was committed. I am not desirous of reading it now, but only to give notice to the learned counsel of the prisoner,

that I shall adopt the reasonings and remarks there, as a part of my closing argument.

Gentlemen, the case you are now called upon to decide, is a most solemn one, and not unattended with difficulties ; and I invite your most careful consideration both of the law and the evidence, which are to be the guides to lead you to a truthful verdict.

Having closed his remarks at twenty-four minutes past eleven, Mr. PARKER proceeded to put in his testimony, as follows :

He first produced and read the commission of Charles Lincoln, Jr., as warden of the state prison, bearing date April 24th, A. D. 1832.

He next produced and read the conviction and sentence of Abner Rogers, Jr., as a "second comer" in the state prison ; by which it appeared that Rogers was convicted and sentenced in March, 1833, at Ipswich, for having a counterfeit bank bill in his possession, with intent, &c., to one day's solitary confinement, and two years' hard labor, in the state's prison ; and again, in March, 1838, at Ipswich, for breaking and entering a shop, and stealing therein a quantity of boots and shoes, to one day's solitary confinement, and five years' hard labor in the state's prison ; and, as a "second comer," under these two sentences, was again sentenced at the municipal court for the city of Boston, at the March Term, 1843, to six months' additional confinement in the state's prison, which last named sentence he was undergoing, at the time of the homicide.

He next produced a plan of the shoe-shop, in which the murder was committed, showing the place where the warden entered, his course through the shop, to the place where he stood when the fatal blows were given, his position at the time, and the mode of approach of the prisoner towards him, for the purpose of consummating his purpose.

Dr. William J. Walker, called and sworn. I am physician of the state prison, at Charlestown, and have held the office for fourteen years ; I saw the dead body of Charles Lincoln, Jr., warden of the prison, on the fifteenth day of June last ; I saw the body at the warden's house, in the prison yard, and there made an examination of it, at the close of the day ; I made some examination of the wounds, then, but a more particular one afterwards, on Sunday afternoon. There was a wound in the back, under the shoulder blade ; another wound in the small of the back ; and still another, in the neck. I examined the wounds ; the wound in the small of the back was not very severe ; the wound under the shoulder blade was the length of my fore finger, which I passed into it, and it was larger at its interior termination, than at the orifice, caused, as I believe, by the turning of the knife in the wound, before it was drawn out ; I cannot say that this wound was fatal ; the wound in the neck was fatal ; the others might not have been ; the wound in the neck divided the carotid artery, went through it, into the windpipe ; the knife was also turned after it entered, as shown by the shape of the wound at its terminus ; this was a mortal wound. Mr. Lincoln must have died instantly ; from the *post mortem* appearances, I doubt if he could have taken a single respiration, after the infliction of the wound.

[The State's attorney here stated, that he should call Dr. Walker again, before closing the evidence for the government, to prove other points ; therefore, his cross-examination was postponed until he was recalled.]

Moses Jaquith, called and sworn. I reside in Boston ; am a paper-ruler ; I went to the state prison on the fifteenth of June last, in the afternoon ; I went there for the purpose of ascertaining whether a prisoner, by the name of Thorn, was the son of a man in Vermont, who had written to me

about him, and who had not seen or heard from him for fifteen years ; I saw the warden, stated to him my business, and he said he would ascertain whether Thorn was the son of this man, or not ; we went down into the yard, and into the shoe-shop ; the warden went first, and I followed. We arrived at the place where Thorn was at work, which was at a bench, against the north wall of the shop. The warden stopped to talk with Thorn ; I passed beyond Thorn and the warden ; I saw a piece of mahogany-carving, which I took up to examine ; when I turned round, I saw the prisoner raising his arm ; the warden had turned, and his arm was partly raised, holding his cane. The blow I saw given by the prisoner was in the warden's neck. When the blow took effect, Rogers was almost instantly seized by some of the other convicts ; the warden moved his lips, as if to speak, but uttered nothing ; his face expressed great agony. Mr. Sargent, and another man, caught Mr. Lincoln, as he fell, and carried him out ; the prisoner had taken the sword cane from the warden's hand ; in the struggle which followed with the prisoner, the sword was drawn out and broken. At the same time I saw the blow given, I heard the words, "*I told you I would ;*" I am confident they came from the prisoner ; I am more confident now, than at the last trial, because I have heard the prisoner's voice, as he challenged the jurors. After Rogers was disarmed, I left the shop ; Rogers had his left hand on the warden's shoulder, when he struck the blow I saw given ; as soon as the warden fell into Sargent's arms, the blood poured out of his mouth ; I afterwards saw the dead body of Mr. Lincoln, at his own house.

Cross-examined. I stood on the left of Thorn ; and Mr. Lincoln stood on his right ; no one was between me and Thorn ; I stood next to Thorn, perhaps three feet off. It appears to me that no one was between me and Thorn ; I was not very calm,

or self-possessed ; the words "I told you I would," did not occur to me, when I testified before the coroner's inquest on the night of the murder ; I cannot say how I went out of the shop ; I went out of the first door I came to ; I was not afraid of a revolt of the prisoners ; I attempted to seize the prisoner's hand, but was prevented by the rushing up of others, who came to assist ; I heard the words "I told you I would," at the very moment of the blow ; I could not see Rogers's mouth at the time ; it was all done in an instant. The next day, or two or three days afterward, these words came to my recollection : they came back plainly to my mind ; I do not mean to swear the words came from Rogers, because there is such a thing as seeing a man talk as well as hearing him ; and I did not see the prisoner's mouth ; I did not testify before the inquest, of hearing any words spoken ; these words, came to me afterwards ; I went out of the shop by a shorter cut than I came in ; I went out slowly ; I cannot tell what recalled these words to my mind ; they came back to me when I was thinking the matter over ; I am no more confident now that the prisoner spoke the words than I was at the former trial ; and I do not mean to swear that he uttered them.

John P. Reed, called and sworn. (It was agreed that the witness had been pardoned by the Governor, to render him competent on the part of the prosecution.) I was in the shoe-shop of the state prison, on the fifteenth day of June last ; my place of work was toward the westerly end of the shop, facing the officer ; I know the prisoner at the bar ; he was at work in the rear of me, upon a mattress, which was lying upon a table ; he was standing at the south end of the table ; I saw Mr. Lincoln enter the shop in company with another person, whom I have since recognized as Mr. Jaquith ; they came along toward Thorn's bench, Mr. Lincoln stopping at Thorn's left ; I do not remember where Mr. Jaquith stood ; he passed Thorn.

The first thing I noticed, was, that some one came up, and took a knife from my bench ; I had five in the rack ; I turned toward the place where the warden was standing, hearing somebody stepping in that direction, and saw the prisoner raising his arm ; he struck the warden twice ; the first blow I saw was in the back ; the second was somewhere between the shoulders ; I then saw the warden turn round ; I sprang to seize Rogers ; the warden had his sword-cane under his arm, and, as he turned, Rogers caught the cane away ; West and Bradley also caught hold of Rogers ; the knife was clenched in his hand ; [the witness here identified a shoe-knife shown to him, as being the one taken from his bench, and which Rogers had in his hand, when seized.] I heard nothing said by anybody ; the sword-cane was broken in the struggle with the prisoner ; Rogers had been at work during the day ; he had knives, which he used about his work, but they were shorter than the one produced ; I saw him talking that afternoon to Simmons ; he once left his table, and went into the blacksmith's shop ; he also went to the officer a few minutes before the warden came in, and talked with him, and Mr. Crowninshield ; Mr. Lincoln had not been in a minute when the act took place ; he made some resistance when seized, and tried to get away.

Cross-examined. When I was pardoned, I had about fifteen months more of my sentence to work out. I have known Rogers eighteen months, having worked with him during that time in the same shop. I did not talk with him about the time of the homicide. I noticed him walking round the shop and going out of it oftener than usual. He was talking to himself and muttering. I saw no sign of grief or distress. On Tuesday or Monday night preceding the homicide, he made a noise in his cell ; a groaning noise, as if in distress, quite loud. I heard others say it was Rogers who made the noise ; it occurred every little while,

from 12 o'clock till morning. On Wednesday morning, he came into the shop in his stocking-feet and without his cap, some time after the rest of the prisoners, and went to his work bench. Mr. Fogg soon came in and told him to go back ; and there was a clinch between them. Rogers said, "I'll behave, if you will not take me back into the old prison and kill me. Do'nt shut me up and kill me ;" he said something more about being shut up and killed. On Thursday morning he complained of a pain in his head. I saw him go to Mr. Sargent, the overseer of the shop, in the afternoon of Thursday ; he got down on his knees ; this was a few minutes before the homicide. He looked wild, more so than usual ; but I don't recollect noticing anything else particularly, in his conduct. I heard him say, after he had received his sentence as a second comer, that he had got off better than he expected ; he expected a sentence of six or seven years, and had got only six months. I noticed the wildness of his eyes on Thursday afternoon, before anything happened. His language to Fogg was, "Don't take me up to the old prison and kill me ; if you will not, I'll behave myself." I think I had five knives on my bench, and Rogers two on the table where he worked. One of them about two inches long, and worn down to a point. There were knives on my bench about as long as the one Rogers took, and more pointed. I noticed his irregularities of conduct as early as Tuesday.

Direct, resumed. The knife Rogers took was, I think, my longest knife.

Henry K. Frothingham, called and sworn. I am clerk of the state prison, and was such on the 15th of June last. I saw Mr. Lincoln on that day alive and in health, at ten minutes past 5 P. M. I saw him again at about fifteen minutes before six, on the bed, in his house, dead. His coat, vest, stock, and shirt were all cut through. Two thicknesses of his coat were cut through. (Identifies the warden's cane.) This he always carried with him.

Cross-examined. The distance of the head of a man placed in the shower bath, from the top of it, is about six feet and eleven inches. It takes twenty or thirty seconds to discharge the water from the barrel through the holes. I had not seen Rogers that day, nor for several days previous.

Dr. William J. Walker recalled. I have known the prisoner, Rogers, for several years. I saw him the morning of the homicide, when he came to the hospital for examination. We have a system of book-keeping regulating the mode of admission of hospital. A book is kept in each department of the prison, in which the name of each applicant, for medical aid, is inserted, and this book is sent to the physician. No man can enter the hospital without the consent of the overseer of the department in which he works. It is the duty of the overseers to inform the physician of the facts relating to each man's illness. Upon the names being entered in the shop books, the prisoners are sent to the hospital. There the names are taken off on to the hospital record, and against each name the prescription is written, and this is again written against the name of the prisoner in the shop book and returned to the overseer.

All applicants come up to the hospital together to see the physician. Several came up on Thursday morning, the 15th of June; Rogers among them. He did not come the first or the last. When he came up to take his seat on the bench to await his turn, I saw his countenance. He entered the arch composedly, and walked steadily to his seat, in a quiet manner. When his turn came, he passed the door of my room in the same quiet manner, towards me. I asked him what was the matter. He threw himself into gesticulations at once, put his hands up to the side of his head and said — "I am in great distress here, I am in pain all over. I am in pain right through here; and feel as if I could not govern my mind." I said to him, "I understand this. If you will do your part

toward meriting kind treatment, you will receive it; but if you do not, you cannot receive it." He became collected immediately, was attentive to my advice, and went quietly away. I did not see him from that time, till I saw him in the court-room in July last. After seeing me, he was sent back to the shop. My prescription, as written in the book for him, was, "*Keep at work*," and I had good reasons for it.

The following is a transcript of the hospital record relating to Rogers, from Feb. 1st, 1843, to the day of the homicide :

Feb. 4th, *Examined and not prescribed for.*

Feb. 13th, *Examined and not prescribed for.*

Feb. 18th, *Examined and not prescribed for.*

- March 22d, *Two bread pills.*

March 24th, *Liquorice.*

April 15th, *Better without medicine.*

May 8th, *Better without medicine.*

May 11th, *Examined and not prescribed for.*

May 27th, *Reported but did not come.*

June 3d, *Physician did not attend.*

June 10th, *Examined and not prescribed for.*

June 15th, *Keep at work.*

I did not see Rogers after the homicide, because I was not called upon to see him. If he had asked for medical aid he would have had it. The frequency of simulated cases of insanity in the prison induced us to establish the system of book-keeping, in regard to admissions into the hospital. My attention has been particularly drawn to simulated insanity; I had thought of making a detailed report of my experience in the prison upon this subject. I am satisfied the prisoner was of perfectly sound mind and that he came to the hospital to deceive me. My reasons for this opinion are — that when he passed the door of the room where I was, I saw his countenance and there was nothing unusual in its expression. — He

approached me at first with his common gait and with his usual calm appearance and collected manner and without any manifestation of distress. On making his statement to me, he threw himself into the position I have described. — He did not feel the pain he pretended to have in his head ; if he had, he would have walked more carefully, so as not to jar it, and his distress would have shown itself in his countenance. — He made no remonstrance against my advice. He said nothing about hearing voices. He indicated nervous excitement. I underscored the words, “ *keep at work*,” because, I believed him to be an onanist, and I wished to keep his mind occupied. I thought work the best thing for him.

TUESDAY, P. M., 3 o'clock.

Cross-examined. I never have held any conversation with Rogers at other times than those when he has been to the hospital ; I did, however, see him about thirty-six hours before the homicide, as the deputy-warden was putting him into the new prison ; I asked the warden what the matter was with Rogers, he smiled and said he was disposed to be refractory. Mr. Payne came and asked the warden at this time, how much water he should put on him ; the warden said, not much, part of a barrel. This was all I had heard of his case, before he came to the hospital on the morning of the homicide. What I said to Rogers on that morning, was based entirely on his manifest attempt to deceive me. I had no doubt through the whole that he was not really sick. I had never noticed him in the yard or chapel more than any other prisoner, and knew nothing particular about him. I did not feel his pulse on the morning of the fifteenth, when he came to the hospital, nor can I say, I did on the tenth ; I did not examine his tongue ; I made such examination as I thought necessary in his case. I alluded to his conduct, generally, when I spoke to him of “ doing his part.” I always considered Mr. Lincoln’s judgment a superior one in distinguishing between real

and simulated insanity ; he always examined a case with a good deal of care ; I have never known him to mistake a case after examination. We had cases of insanity in the prison ; never heard Mr. Lincoln say it would not do to admit, that any person in the prison could be crazy. There are insane patients in the prison whom I do not attend. I should not think it came within my province to attend to such cases. I do attend them as well as others who are sick ; but there are no accommodations in the prison for treating insanity as such, and if not sick, I do not attend them. There is a man there by the name of Erving, who is insane. He was so when he came to the prison. Others have been sent there who were insane, and not proper subjects of punishment. From what I have seen of Orman Johnson's case, I consider it one of counterfeited insanity ; but I have had no coopération from the other officers of the prison in respect to it—(Reads the record of his case, and states his reasons for prescribing for him “to be chained and kept at work at the grindstone.”) Previous to the morning of the fifteenth of June, I had not heard that Rogers had been insane, or pretended to be ; he only said to me, “I cannot govern my mind ;” I concluded he was trying to pass himself off as an insane man ; have no recollection that Rogers ever made any such complaint before ; always thought he came to the hospital for trivial purposes ; I know of but two cases of real insanity which have occurred in prison, and which originated there ; perhaps there have been twenty cases altogether, including those who came there insane. Mr. Lincoln always examined cases with the utmost care ; we have had five or six cases of systematic attempts to simulate insanity in the prison.

H. K. Frothingham, Clerk of the Prison, recalled. Produces the record of punishments, by which it appears, that Rogers, during the six months previous to the homicide, was punished, on the 9th of April, 1843, with one day's

solitary confinement, for disobedience of orders ; on the 14th of June, for making disturbance in his cell, was showered with half a barrel of water ; and on the fifteenth of June, for the same cause, was again showered with three-fourths of a barrel.

Warren B. Parker, called and sworn. I was an officer of the prison on the 18th of June last, and had charge of the cookery. About fifteen minutes after the death of the warden, the deputy warden came to the cookery and wanted me to go and search Rogers. I went to his cell, opened the door, and told him to come out. Rogers said, "what are you going to do with me?" I said, "step out." He said, "I have fixed the warden, and I'll have a rope round my neck to-night." I made no reply, and searched him and found nothing. He said nothing more. Two or three other convicts were present at this time. This was about fifteen minutes after the homicide. I had seen Rogers before, but not on that afternoon nor on that morning. He seemed calm and obedient. On the strength of what he said, I took his suspenders from him.

Cross-examined. His words were, "I *will* have a rope round my neck to-night," not, I *shall* have a rope. I was with him fifteen or twenty minutes. My testimony at the former trial was the same as it is now. I am sure the word was "*will*," and not "*shall*," and I so testified before.

Hiram Fogg, called and sworn. I was a watchman in the state prison on the 15th of June last. I know the prisoner and had seen him a day or two previous to that time. On Wednesday morning, June 14th, I was ordered to take Rogers out of the solitary cell, where he had passed the night, and take him to the shower-bath. I went to his cell ; he stepped out, and I

told him to stop there, till I deposited the key in the cookery. When I came back, he had gone down to the shop. His shoes were down at the heel and he had no cap on his head. I found him in the shoe-shop talking with Mr. Sargent, the overseer. As he saw me enter, he passed down to the lower end of the shop. I followed him down and asked him how he came there. He answered, "I thought you were going to shut me up." I told him he had better go with me, his punishment would be light. He said he should not go. I spoke kindly to him then. I turned my head round for an instant toward the north part of the shop, and he collared me and pushed me back against the door at the west end of the shop. I recovered myself, and Mr. Sargent and others came to my assistance. Some one asked Rogers if he would go with them. I said, if he went with any body, he must go with me. They then said, "Rogers you had better go, you'll not be hurt." He said then, "I will go." I shut him up in the cell, where I found him, and reported his resistance to the warden. Five minutes afterwards, I carried him to the shower-bath and gave him half a barrel. He said he would rather take six barrels, than two of the cats. I did not see him again till Thursday morning, when I saw him coming down from the hospital; there was nothing unusual in his appearance; I had orders to punish him again that morning with the shower-bath and was looking after him. I suggested to Rogers, that it would be well to defer his punishment till noon; and on going to Mr. Lincoln, who was in the blacksmith's shop, he assented. I saw Rogers at half past twelve o'clock; I was talking with Mr. Sargent when the bell struck. Rogers went into the stone-shed; I went there; Rogers had not formed with his division. The deputy-warden told him I wanted him, and he turned and came back to me. I told him I wanted him to go to the shower-bath. He made no objection; I saw nothing peculiar in him; I gave him three-

fourths of a barrel; he said nothing when he came out; he went across the yard, and I did not see him again till Friday morning, the day after the murder, at quarter before six. The deputy-warden was with me; Mr. Dwight was not with me. I unlocked his cell door, and told him to step out and go to the farther end of the arch. He obeyed me and seemed to understand what I said. He sat down on the bench and ate his breakfast. His hands were chained behind him. I think I raised the plate of rations to his mouth. He didn't say much at this time. He said, I recollect, that there was checkerberry in his food, and he thought, some on his leg. He didn't eat much and looked rather wild. Should think that Dr. Bell and Mr. Dwight called after breakfast.

I think he was taken out of his cell again that morning when he was visited by the Chaplain, and Mr. Sumner, the inspector. At this time he didn't say much, he seemed pretty calm. Mr. Sumner had some conversation with him. At quarter past one, Mr. Dwight went in with me to see him. Some conversation took place then; I can't say whether there was a prayer made by Mr. Dwight or not, and do not recollect the conversation. He took his dinner, and I think I took his hand-cuffs off. At half past five P. M. of the same day, five of the Executive Council came to the prison and went to see the prisoner. They had some conversation which I do not particularly recollect. I think Mr. Gates had the most to say to him. He reminded him, I think, that he was a murderer; and alluded to the widow and children of the deceased, and intimated what would be his own probable fate. I recollect Rogers said, "I hope they'll allow me a fair trial."

Next morning, the 17th. I saw him again; took him out of his cell; two of the convicts were with me. Rogers said that there was checkerberry in his food. The person who had brought it, thereupon broke off a piece, and said there was no checkerberry in it. Upon this, Rogers ate some of it; he

looked round while eating, and said, "If we had a pack of cards here, now, we'd have a game of loo. There's just enough of us for a game." I waited for him to finish his meal and then gave him a bed; he had'nt had one, before that morning, since he had been in the old prison. He said something about Simmons, one of his fellow-convicts, at this time; but I do not recollect what. He went back to his cell, and I didn't see him again till half past five, P. M. Then, he told me that he felt better; that he had got some sleep. I saw him Sunday, looking at the corpse, in company with several persons, and again Monday A. M. He was pretty comfortable then; I didn't see any derangement about him. In reply to some one's question, I heard him say that he was thirty years old.

Cross-examined. Rogers might have said, on Wednesday morning, when I had the scuffle with him, that "I was going to shut him up in the old cells and kill him." I didn't notice any unusual excitement in his manner that morning. It surprised me that he should clench me. I don't recollect ever hearing Mr. Lincoln say, that he thought Rogers was *shamming it* — don't remember his assigning any reason for having him showered. Diamond and Savary were the two convicts who accompanied me Saturday morning. I do not recollect Savary's being with me on Friday. I heard Rogers speak about the poco game, after the homicide, several times. It was Savary who fed him Saturday. Rogers might have said at that time, that his joints were swelled.

(Some time later in the afternoon, after Mr. BEMIS had commenced his argument, this witness was recalled at the request of Mr. PARKER, and Mr. BEMIS giving way, proceeded to add to his testimony as follows: (For the sake of connexion this testimony is here inserted continuously.)

I have omitted some items in my testimony, I find, on looking at the notes of the various conversations which I kept.

On the morning of the 17th of June, Rogers said, if the warden had let him go six months before, he would have been still alive and among his friends. He observed that his health was better than it had been any time since he was in prison. On the 19th, he alluded to my scuffle with him Wednesday morning, and said that he had done wrong in taking hold of me; he thought I was going to shut him up in the old prison. He said he supposed his trial would come on in July, and that he should'nt live more than twenty days — that no mortal could save him from hanging, for it would never do to overlook his offence, the warden's office was so responsible an one. He asked me if I had never known a similar case. I told him I had not; but says he, "did you never read of such a thing? I have read of men's doing such things when they were not in their right minds." He asked if his father would'nt come to see him again. He said he was afraid that if he had found a knife on his bench when he clenched with me, he should have used it on my person — that he should have fought as long as he could stand.

On the 21st he said no mortal could save him — that God had brought this upon him to punish him for his wicked life. On the same day he also said, that if the warden had let him go two years before, he should have been alive, and he, himself, out among his friends. He recollected the convicts taking hold of him in the yard, after the homicide, at this time — (Rogers volunteered this conversation.) — His account of himself, was, that he did 'nt know where he was, nor what he had done. He said the checkerberry was all his imagination; the devil had got into his head. He said he thought he heard Mr. Bemis and the Governor coming to take him out of prison the night before. The 22d, he said he had slept well; and he ate well. He said he heard Sam Robinson say, that he never knew one to live over twenty-four hours in his case; but that the devil had got into his head; Sam Robinson never

said so. On the 23d, he said he knew that the warden could get him punished or not, for that it was just as he said. Dr. Bell visited him that morning about ten o'clock, and told him who he was. On the 24th, he told me that he had been looking forward to having his liberty; but that this was brought upon him to punish him for the wicked and abandoned life which he had led. He wished to see Mr. Curtis. Mr. Curtis, the chaplain, came to visit him and had some conversation with him. Mr. Curtis asked him if he had'nt said, when Rich, (one of the convicts) committed suicide some five years ago, that he was a fool for killing himself before he had killed the warden; and Rogers acknowledged that he had said so.

Cross-examined. It was Saturday, the 17th, that Rogers first said that he had got some sleep and felt better. He spoke a number of times of the checkerberry and poco games being all his imagination. He *did* speak of it, as if he once thought it a reality. I was on duty in the guard-room the night of the 18th, near where Rogers was confined in the old prison — think I did hear some pounding and hallooing. I thought perhaps it was Rogers, but did not go to him. I *did* once hear Rogers say that it was a dreadful thing for Mr. Lincoln's family to have him taken off so. When Rogers talked with me, it was frequently so fast that I could not understand him. He interrupted himself while eating, to say *checkerberry* and *poco*. (Much of the cross-examination of this witness is omitted, directed to show the jury that he was prejudiced against the prisoner, and had volunteered in behalf of the prosecution. No material facts, however, were elicited.)

Joseph Tully, called and sworn. (This witness, it was agreed, had been made a competent witness, on behalf of the government, by pardon.) I have known defendant three years. I was in the habit of cutting his hair at the state prison, being barber there. I have heard him speak of Mr. Lincoln in a threatening manner, twice. The first time was about five

months before I left the prison, which was on the 15th of February last. I was cutting his hair, and I asked him why he got into trouble so often. (He had been showered that morning.) He blamed the warden for punishing him so; said he had been left out by Mr. Braman. He then added about the warden, "d——n him I'll fix him." I don't know that anything more was said at this time. Two or three months after, in the shoe-shop, he asked me if anybody was going over to get an additional sentence. I said I didn't know. Then he said he supposed the warden would put it on to him more than the others. But, says he, "I'll fix him in the prison, or out." I told the warden of this last, and he only laughed at it.

Cross-examined. Rogers was punished very frequently, and had been showered the morning of the first conversation I have related. I told something of this conversation to Mr. Warren B. Parker, the officer. I have not told anybody in the House of Correction, that I was pardoned out to testify — or that I testified for money — don't know that I ever spoke to Rocheford, a convict, there, about testifying in this case — have not been told by anybody that it was more important to use the word "*fix*," than the word "*revenge*," which I used on the former trial in testifying about this matter.

Galen Holmes, called and sworn. I am employed at the Leverett-street jail, where the prisoner has been confined since the 22d of June last — am watchman there — have seen Rogers four times a day while in jail — should think that he had been rational during that time — have not seen any symptoms of derangement.

Nathaniel Coolidge, called and sworn. I am jailer of the Leverett-street jail. I received the prisoner into custody some time in June last — have frequently seen him during his confinement — have not noticed any marks of derangement about him. He has been a good prisoner.

Isaac A. Coolidge, called and sworn. I am deputy jailer — have known Rogers, in jail, since June last — have not noticed anything uncommon in his deportment as indicating insanity.

Mr. PARKER here stated that he rested the case for the prosecution, unless he should have occasion to offer testimony hereafter to rebut the case made out by the defendant; and at half past five, P. M., Mr. BEMIS opened for the defence, substantially as follows:

WITH LEAVE OF THE COURT, AND YOURS, GENTLEMEN OF THE JURY,

The prisoner is called upon for his defence, when as yet the true nature and character of the act with which he is accused have hardly begun to appear. Notwithstanding the apparently strong case made out by the government, hardly a particle of the real truth of the transaction, so to speak, has yet developed itself. Indeed, to one acquainted with the whole history of the homicide, as the prisoner's counsel from their situation necessarily must be, it is a matter of surprise, in considering the testimony applicable to the case, to observe how it was possible, even for the ingenuity and practised skill of the state's attorney, to select from the evidence so much as he has adduced for his purposes, which should at the same time afford so little indication of the real issue to be submitted to your judgment. Now, the act stands before you one of unprovoked and unjustified atrocity. And yet, I think you must have already demanded in your own minds some further proof of a motive or a malicious intent on the defendant's part, and some further proof of a sound mind at the time of the deed, than are afforded by the legal presumptions which the prosecuting officer urges upon your notice, and upon which he states that he relies.

But, undoubtedly, he is correct in asserting that these presumptions throw upon the prisoner the burden of showing

his want of sanity, if he can, and that it is for him to assume the task of developing the truth to a further extent, if the truth will constitute his justification.

But before proceeding to state his defence, the prisoner's counsel cannot but congratulate him, on the more fortunate position in which he stands for his trial, now, than he stood on the former occasion, before another jury. Then, the intimation of the existence of a defence had hardly been made. The newspapers had, indeed, hinted, that his counsel would *set up* for him the plea of insanity; but that there was anything in the plea itself, was, we believe, a perfect surprise to the jury as well as to the community at large. Now, with the evidence of that trial before them, and made the subject of general discussion, a doubt has at least arisen in the public mind, in which you have probably participated, whether the prisoner is altogether guilty: — Whether there is not a chance of the truth of his story, that he was unconscious of, or irresponsible for, the act at the time of its commission: — Whether there may not be another version of this unhappy tragedy, which shall change it from one of criminal atrocity into an accident of disease; and which shall at any rate demand the most rigid scrutiny before it is adjudged a case of murder, and worthy of the penalty of death.

So far, the defendant's position is a less critical one than on the former trial. And yet there is so much against him, even now — the task of developing the truth in regard to this transaction is so difficult an one, — that, for myself, I feel oppressed and almost overwhelmed with the responsibility which belongs to the humble share I have undertaken in this matter. To defend one accused for his life, is at any time a sufficiently anxious and responsible duty for counsel. But when the defendant's situation is beset with as many difficulties and disadvantages as the prisoner's; he a convict, and the second time a prison-inmate; his victim a public officer

high in the esteem of the community, and surrounded by an extensive acquaintance and circle of relatives and friends; and the only defence, that of insanity; — one of stronger nerves and higher powers than I possess, might well feel himself unqualified for the undertaking.

Accordingly, I would gladly shrink from the duty which was at first imposed upon me, and which I have since voluntarily entered upon, but that the exigencies of the occasion now demand its fulfilment at my hands. And it shall be performed to the best of my endeavors. Yet permit me to say, that I feel a confidence in the course of justice, human and divine, which forbids any substantial distrust of the just issue of these proceedings. I believe that that providence above us,

“ Which shapes our ends,
Rough-hew them how we will,”

will not permit the truth to be overwhelmed or obscured through any imperfections or mistakes of mine, in an issue so vital to the unfortunate prisoner, as this, and so momentous to human justice and social law. With comparative self-possession and equanimity, then, fortified as I am with the able coöperation of my senior associate and friend, I proceed to lay the prisoner's case before you.

He is, undeniably, a prison-convict, and has been more than once the subject of punishment. But is there anything in this circumstance which should deprive him of the right of a fair and impartial trial? Nay, is there not something in the fact, that he committed his crime, (if it be one) while undergoing the sentence of the law, which should entitle him to all the privileges of the law? At the time he dealt the fatal stroke to the deceased, the law was exacting from him the highest penalty known to our institutions, save that of death; his victim was the officer of the law; and his provocation, if

any, grew out of the infliction of his sentence. Besides, too, at the moment of the act, was he not embraced within the very folds of the law — encompassed with the safest custody, and surrounded with the amplest proof? Where, if ever, then, could a case be named, where all the impartiality and deliberation known to the course of legal procedure should be more scrupulously observed, than here?

And yet the sentiment has reached the ears of his counsel, that the defendant ought to have been dealt with summarily, at the moment of the homicide; and that, for example's sake. As if the life of a human being were nothing compared with the benefit of a momentary intimidation of prison-convicts, by its extinction! As if the enforcement of the law in an institution specially set apart for the purpose, were to be secured by violating it in as flagrant a manner as it had been infringed! As if prison-convicts were beyond the pale of the law, when the very establishment of state-prisons is due to their being thought worthy of its protection!

But I trust that the sentiment in question, has never been heard beyond the prison precincts; and that if uttered there, it may have had for its excuse, the apprehension of danger which a system of force and coercion is always apt to inspire in the minds of those who are obliged to administer it.

Really, however, to notice the connexion which the subject of prison-discipline has with the prisoner's case, how much more expedient that the prisoner should be fairly tried and legally acquitted, if truly insane, and believed to be such by his fellow convicts, than that he should be oppressed and unjustly condemned, merely because he is a convict? How much more creditable to human nature, and satisfactory to those connected with prison-management, themselves, to believe that a transaction like the present, could only have proceeded from an insane impulse, than have been the result of deliberate contrivance and cold-blooded barbarity? Let

this deed be shown to have been designed, and whose faith in human conduct would not be shaken? Who could any longer doubt, that man in some states of degradation, may be entirely lost to the afflictions of humanity, as well as to the dictates of reason; and that prison-discipline hereafter should be graduated for the treatment of fiends, and not of human beings? No! gentlemen. Faith in the better feelings of man, and confidence in his better reason, are, after all, the foundation of penitentiary-government, as they are elsewhere the keys to human control; and if you take them away or destroy the belief in their existence, you convert prisons into receptacles of demons and not into institutions of reformation and improvement. I do not say this to lead away your attention from the inquiry, whether the prisoner's conduct was real or pretended, (for on this point we challenge the minutest investigation,) but that if you become satisfied, he was really laboring under some disorder of the reason, you may not, in any degree, fear to absolve him from punishment, through fear of pernicious example. Rather believe, that the impartial and upright administration of the law, will help the execution of the law; and show, that no man, however humble — however much the object of legal animadversion heretofore — is beyond the pale of equal justice, or the fair adjudication of his fellow-citizens.

But the prisoner's case does not labor so much from considerations such as have just been alluded to, as from what we believe is the popular distrust of his defence, generally, viz. that of insanity.

The common opinion has it, that this plea is abused — that it has become so common, that it should hardly be listened to with patience — that it is little else, in fact, than a general pretext for the worst crimes.

If this were so, indeed, we should have before us, at the outset, an almost hopeless task, to gain a hearing for our

cause. But we do not believe that the prejudice alluded to is one deep-founded, nor, in reality, justly entertained. On the other hand, we undertake to say, that insanity, as a defence to criminal prosecutions, is not pleaded so often as it justly might be ; and that the danger lies, rather on the side of paying too little, than too much, regard to it.

Perhaps, one reason why this plea *seems* to have become so frequent, is, that according to the testimony of those acquainted with the matter, insanity has more than proportionally increased with the growth of population in this, and other countries. Then, I need not allude to the well known fact, of the increased knowledge of medical men and the community, upon the subject, leading to the detection of the disorder in supposed criminals, who in former times would unquestionably have suffered as murderers and malefactors. Again, may there not be an exaggerated idea abroad in the community, of the actual number of instances of acquittal, on the ground of insanity, arising from every such case being made the subject of comment and notoriety ? And is there not something in what is said to be a national trait of ours — an *American* distrust of being deceived — to account for an over-jealous suspicion of this defence in our community ?

But, without inquiring into the origin of this distrust, what is the fact, in regard to this plea of insanity being abused among us ? Where are the cases of those who have evaded justice under its cover ?

Am I pointed to recent trials, such as have occurred in New York, in the instance of an unfortunate, and deeply to be pitied young woman, by the name of Norman ? — Or to that in Philadelphia, where a person named Singleton Mercer, was tried for the murder of Hutchinson Heberton ? — Who can fairly say, that these are cases at all connected with the point in question ? Who doubts that any other plea to which a decent name could have been given, (though I am

not prepared to say, there was not actual insanity in both instances, nay, am strongly inclined to think there was,) would not have availed as well as that of insanity, with the respective juries who sat upon them? Laying aside, then, such instances as these, which do not fairly belong to the argument, where, I ask again, are the cases of simulated insanity *successfully practised*, to be found? I have in mind to mention another recent case of considerable notoriety, where the simulation of insanity was indeed attempted, but with such a result that I do not scruple to allude to it. I refer to the case of the Scotch woman, Christiana Gilmour, who was demanded up, a few months since, in New York, as a fugitive from justice, from her own country, on a charge of having murdered her husband. The jury may perhaps recollect, that she was defended for a while on this ground, of being insane. But was the defence successful; and how long did it blind the eyes of justice? Not a physician could be found to give a deliberate opinion in favor of her derangement; and the simulation was exposed, so to speak, before it had been fairly assumed.

But rather than allude to recent occurrences which may be in your own recollection, or single out individual cases which may be possibly objected by the state's attorney, hear what is the concurrent testimony and consolidated experience upon this point, of those who have best considered this matter, and are most competent to express an opinion; men who from their position, in having the custody of all, or nearly all, the criminals exempted from punishment on this account, as well from a long acquaintance with the subject of insanity, generally, are eminently qualified to be judges.

Dr. Woodward, the superintendent of our own state hospital, and whom you will have the pleasure of hearing testify in this case, says, in page 73, of his Tenth and last Report to the Legislature, "Of all the cases that have come to my know-

ledge, and I have examined the subject with interest for many years, I have known but a single instance, in which an individual arraigned for murder, and found not guilty by reason of insanity, has not afterwards shown unequivocal symptoms of insanity in the jails or hospitals where he has been confined: and I regret to say that quite a number who have been executed have shown as clear evidence of insanity as any of these."

So, Dr. Bell, of the McLean Asylum, and whom we also have the pleasure of summoning in this case, remarks in one of his annual reports, "that for one real criminal acquitted on the score of insanity, there have been a dozen maniacs executed for their acts." Dr. Brigham, formerly of the Hartford Lunatic Retreat, and now superintendent of the New York State Hospital, in his Eighteenth Annual Report of the former institution, page 19, (note) holds the following language: "I know it is a common, but frequently, I suspect, a careless remark, that the plea of insanity is too often successfully adduced as an excuse of crime. So far as I have any knowledge, this is not the case. I do not know of a single instance where the insanity of an individual has been certified to by those well informed and well qualified by experience with the insane to judge on such a subject, that time and public opinion has decided to be incorrect. While I know many instances where the plea has been disregarded, which time has shown ought not to have been. It might be well for those who, in halls of legislation, or in courts of justice, confidently assert that insanity is frequently feigned so as to deceive those well informed on the subject, to adduce instances of the fact."

The same writer mentions a case in point, where an insane man was executed in that state, (Connecticut,) which may properly be cited in this connection. It is mentioned on page 22 of the same report, and is as follows. (The events oc-

curred in Litchfield, in 1785, and are related by a contemporaneous correspondent of the Connecticut Courant.)

“Last Wednesday, Thomas Goss, late of Barkhamstead, was executed at this place pursuant to the sentence of the superior court, for the murder of his wife. It seems he had adopted the idea sometime in October, 1784, that wizards and witches haunted him, and under pretence that his wife was a witch, he justified his conduct in depriving her of life. Under such infatuation, he ordered his attorney, in most peremptory language, not to apply for a reprieve to any human tribunal, alleging that his Heavenly Father had forbidden all such proceedings. He called himself the second Lamb of God; said he was brother of Jesus Christ, and sometimes said he was the child born of the woman mentioned in the revelation of St. John, before whom the dragon stood ready to devour the child, &c. To such extravagant ideas, he added, that the sheriff could not hang him; that his Heavenly Father would interpose if the attempt were made, and he be liberated; and that 30,000 males above fifteen years of age, would be instantly killed by the shock in North America. He pertinaciously adhered to such opinions to the last moment of his life. The night preceding his execution, he slept well. In the forenoon of the same day, he slept calmly a considerable length of time; at dinner he ate heartily. On his way to the gallows, and while there, he appeared calm and unmoved; not the least emotion could be discerned in his countenance, nor the least perturbation in his speech, and the last word he said was, that the sheriff could not hang him.” Dr. Brigham adds, “the late Dr. Miner informed me, that Goss, when on the gallows, exhibited the utmost unconcern, leisurely took a chew of tobacco; and that this, and his indifference so exasperated the people assembled, that they rejoiced at the death of one they believed hardened in guilt — one whom we must now regard as insane,

and whose life, had the circumstances occurred at the present day, would not have been thus sacrificed."

Nor is this the only instance where justice has flagrantly erred in our neighborhood, in inflicting the extreme punishment of death upon the insane. I may allude to a much noted case occurring in New Hampshire, in the year 1833, where a young man named Prescott, was hung for the murder of his adopted mother, Mrs. Cochran. (Some particulars are given in 1 Beck's Med. Jur. 623. A fuller report of the trial I have by me, in a pamphlet edition, printed at Concord, 1834.) The details of that case are perhaps too long to be repeated here. But it may be sufficient to say, that the conviction was so doubtful a one, that the court set aside one verdict of guilty, and, as I have been informed, joined in an application to the executive, for a pardon upon the second; and that the better opinion of those who have investigated the matter and are competent to judge, has now settled down into the belief, that the young man was quite irresponsible for the act he committed. At any rate, the language held by his distinguished counsel, the Hon. Ichabod Bartlett, of Portsmouth, on a subsequent occasion, before one of the higher courts of that state, may well warrant the belief that justice in this instance also made a fatal mistake. As I happen to have his reported language by me, permit me to repeat it. It is in *Ferguson's trial*, in 1841, in the same state. The counsel for the government has said, that under our forms of trial, 'it is impossible that the innocent shall ever suffer.' 'Impossible that the innocent shall ever suffer!' While these words are uttered, I would to Heaven that I could forget the horrible scene that has been so recently exhibited in a neighboring county; — the public execution — no; by its true name, the *official murder*, of a poor insane boy, as irresponsible for his acts as the sleeping infant in the cradle."

Across the water, too, under the jurisprudence of the mother country, we hear of other such lamentable mistakes : not, be it noted, in days of ignorance and comparative barbarism, but within the improvements and discoveries of modern science. A man by the name of Bowler was executed in this way in England, in 1812, whose case is now generally agreed to have been a reproach upon justice. (The case is found reported in Shelford's Lunacy, p. 461.) This man had once been adjudged a lunatic under a formal inquiry instituted for that purpose. He was so insane previous to the homicide which he committed, that he would eat his meat raw, was in the habit of laying out in the open air, in the rain, and was considered so liable to commit suicide, that a watch was kept upon him to prevent his executing his purpose. Notwithstanding what is considered a fair charge from the court, he was found guilty and ultimately suffered death. Medical writers alone do not condemn this execution ; but one of the English judges themselves, in the recent trial of Oxford, in 1839, (9 C. and P. 533,) Mr. Baron Alderson, did not hesitate to call it a piece of barbarity. So a very remarkable case occurred in Scotland, in the year 1831, in the instance of a man by the name of Howison, (1 Beck, Med. Jur. 607 ; Pagan, Med. Jur. 229, S. C.) which may be worth citing, to show how far the courts may be deceived in judging of this kind of defence. Howison was tried for the murder of a widow named Geddes, to whom, so far as it appeared, he was an entire stranger, and against whom he was not shown to have had any ill will, or other motives of violence whatever. He was a pedler ; and being seen to enter her house one day, was observed to leave it in a stealthy and hurried manner soon after. The woman was found by some of the neighbors who went in in the course of the day, with her head split open, apparently by a spade which lay near. Howison being arrested the next day, denied all knowledge

of the transaction, though he was undoubtedly guilty of the homicidal act. On his trial he was shown to be a person of the most eccentric and extravagant habits ; salting his head and bed to keep away the witches, as he said ; wounding his arms and wrists with pins and needles which he carried for the purpose, and sucking the blood as he ate. He made his ordinary meals of raw potatoes and bullock's liver, eating a most incredible quantity of the former in a voracious and filthy manner. He would sally forth at night after having gone to bed, with a stick, and brandish it in the most extravagant manner, and exhibit various absurdities till his neighbors interfered. The testimony of the medical men at the trial, all agreed in pronouncing him insane. But the jury having thought otherwise, he was convicted and finally executed. The final demonstration of his insanity — stark madness, rather, as we should deem it,— was his confession the night before his execution, of no less than eight murders, no one of which had ever been heard of, and of course could never have been committed.

These are a few of the many cases that might be quoted to this point. But perhaps they are sufficient to demonstrate that mistakes, and dreadful mistakes, have been committed on the side of disregarding the defence of insanity. At any rate, they may well justify the earnest remonstrance which those familiar with the subtle and insidious diseases of the mind, set up in opposition to the popular prejudices on this subject. Allow me, in this connexion, to quote the language of Esquirol, the great French master on insanity, and the worthy successor of Pinel. To those acquainted with his reputation, I believe it will not be necessary to say, that it is anything but that of an extravagant or over-zealous writer.

“ Heaven forbid, that favoring materialism and fatalism, we should wish to originate or defend theories subversive of morality, society, and religion. We do not intend to make ourselves

defenders of crime, and transform atrocities into paroxysms of insanity. But we believe that the doctrine of monomania is another thing than crime, excused by crime. At the end of the fifteenth century, a royal commission charged to examine Martha Brossier, accused of sorcery, concluded their report with these memorable words: "*Nihil a demone, multa ficta, a morbo pauca*: — Nothing from the devil, many things feigned, few things from disease." This decision served as a rule to the judges who had to pronounce on the fate of sorcerers and magicians. We say, in characterizing the murderous violence of homicidal monomaniacs, "*Nihil a crimine, nulla ficta, a morbo tota*: — Nothing from a criminal intent, nothing feigned, all from disease."¹

But, perhaps, I may seem to lay too much stress upon the statements and opinions of medical writers, whose professional zeal may have led them to express themselves with exaggeration upon this head. Hear, then, what an eminent judge in a neighboring state, one whose opinion I am confident will have no little weight with the learned bench, C. J. Parker, of New Hampshire, has to say about this matter. I quote a portion of one of his charges to a grand jury, as reported in 20 Am. Jur. 456.

"The public papers, in giving reports of trials, often say, 'the defence was, as usual, insanity,' or make use of some other expression, indicating that this species of defence is resorted to in desperate cases, for the purpose of aiding in the escape of criminals from justice. Such opinions are propagated in many instances by those whose feelings are too much enlisted, or whose ignorance respecting the subject is too great, to permit them to form a dispassionate and intelligent judgment; and they have a very pernicious tendency,

¹ 2 Esquirol, *Maladies Mentales*, 812-3, concluding remarks on Homicidal Insanity.

inasmuch as they excite prejudices in the public mind, and the unfortunate individual, who is really entitled to the benefit of such a defence, is thereby sometimes deprived of a fair and impartial trial. They tend to make the defence of insanity odious, to create an impression against its truth in the outset, and thus to bias the minds of the jury against the prisoner, and to induce them to give little heed to the evidence, in the very cases where the greatest care, and attention, and impartiality, are necessary for the development of truth, and the attainment of justice.

“ We all concur in the doctrine of law, that for acts committed during a period of insanity, and induced by it, the party is not responsible ; that when the criminal mind is wanting, where instead of being guided by the reason which God bestowed, the individual is excited and led on by insane fury and impulse, or by the aberrations of a wandering intellect, or of a morbid and diseased imagination, or a false and distorted vision and perception of things, punishment should not follow the act as for an offence committed ; that when the faculty of distinguishing between right and wrong is wanting, the individual ought not to be held as a moral and accountable agent. As well, nay, much better, might we, as was formerly done in France, institute prosecutions against the brute creation for offences committed by them, and hang a beast for homicide, than to prosecute and condemn a human being, who is deprived of his reason ; for in such case there is no hope of a restoration to a right mind, and a reinstating of a fellow citizen, who has been once lost to the community, in the rights and affections of humanity.

“ But if we imbibe the idea that instances of insanity are very rare — that derangement exists only when it manifests itself by incoherent language and unrestrained fury — that the defence, when it is offered, is probably the last resort of an untiring advocate, who, convinced that no real defence

can avail, will not hesitate to palm off a pretended derangement to procure the escape of his client from a merited punishment — if in this way we steal our hearts against all sympathy, and our minds against all conviction, it is of little avail that we agree to the abstract proposition, that insanity does in fact furnish a sufficient defence against an accusation for a crime.

“There are undoubtedly instances, in which this kind of defence is attempted, from the mere conviction that nothing else can avail — cases in which the advocate forgets the high duty to which he is called, and excites a prejudice against the case of others, by attempting to procure the escape of a criminal under this false pretence ; but such cases are truly rare, and usually unsuccessful.”

These abundant and eminent authorities must have satisfied you, I think, gentlemen of the jury, if any proof were wanting, that insanity is not so often pretended as is supposed, for a cloak and a refuge from crime ; — that in reality the mistake, if any occur, is not on the side of mercy, but unfortunately on that of inhumanity ; — and that when a defendant on trial before you asserts this for his defence, you are to receive it with respect, and examine it with the profoundest caution and deliberation.

But perhaps it is not the force of the common prejudice against their client's plea which the prisoner's counsel have so much to dread in this case, as another idea connected with this subject of insanity which is beginning to be promulgated in the community, and which may therefore have reached your ears, and gained some hearing. And that is this — that considerations of public expediency require that an example should be made of the *partially* insane ; that as the insane are capable of being acted upon by fear of punishment, and dread of suffering, so the contagiousness of insanity may be checked, and the actually affected induced to control them-

selves by an occasional enforcement of the law upon some of their number.

The argument concedes, I believe, that it is a violation of the established principle of law, that where there is a doubt, it shall go to the benefit of the accused ; but only contends, that it is better to hazard a possible wrong, than to omit to secure a probable benefit.

So far as our case is concerned, we do not know that we actually come within the scope of this new doctrine, or need reply to it. We hope to show, not a case of partial mental alienation, but one so complete, so overpowering, that no jurist, no theorist even, would venture to deny that it is one of irresponsibility. But lest we may seem to be affected by it, I propose to reply to it with one or two considerations. And first, let me ask of the advocates of these *humane* and *practical* theories, if they bear in mind that they themselves may be the next persons likely to suffer from them ? Who is it that are afflicted with the malady of a disordered reason, and in a state of mental blindness are impelled to outbreaks of violence and ferocity ? not the criminal and criminally disposed alone, but as likely as any, the upright and conscientious, the intellectual and well educated. The clergyman in his pulpit, the physician in his class room, the judge on the bench, nay, the jurist or magazine-writer, himself, has no safeguard against the act which he wishes to correct and chastize by punishment. And are such persons to be immediately sacrificed for the quiet of society, and because others may be inflamed into paroxysms of insanity by their example ? Or is a distinction to be made on the ground of character, when the same act is to be submitted to the same standard of legal judgment, and it is the theorist, and not the vagabond, who is put upon his trial ?

Again, if the effect of example is so well settled in this matter, and punishments the most sanguinary are therefore

the most efficacious, why do not legislatures hear from superintendents of insane-asylums, for further and more cogent enactments for their security? Why do we not hear of petitions for the erection of the gallows within the hospital precincts, and its use being allowed as part of the regular system of treatment? These same curators of the insane are further accused of conspiring, as it were, against the public peace, in their professional zeal to exculpate this dangerous class of offenders from punishment. Have their accusers, let me ask, ever noted the singular paradox, that they are swearing into their own custody these same offenders against whom further legislation is so much needed?

But the argument in question is only urged against the partially insane; those in whom some power of control is supposed still to be left; those whose intellects, so to speak, are only tainted in one spot, but are not as yet entirely infected.

And who will undertake to draw the line between a partial disturbance of the reasoning powers, and a total affection of the whole understanding? Disease once shown to exist, who considers himself capable to define precisely its effects upon the whole brain or other organ of the mind? Where does the power of control begin to cease, and that of disease to overwhelm? And yet the *safer* and *humane* way is to make an occasional example, say these reasoners! — Not exactly at random, but where the accused and his friends are only able to make out one of the least clear cases of irresponsibility. As if the more a man were disordered, he were not therefore the less competent to establish it! And as if the true idea of justice were not that the law should befriend those most, who have fewest friends to testify for them!

Supposing a mistake to be made, and a case of overpowering disease to exist, though the proofs to establish it are only slight, what greater barbarity — what more like brutish slaughter — can be imagined, than the execution of the unoffending

maniac? It can only be likened to the blind cruelty which we see certain animals practise upon those of their species, who have fallen into helplessness, or have suffered some disabling injury.

Again, how irreverent and almost impious, the taking of life under such circumstances! Whom God hath visited, him man undertakes to judge and afflict with punishment. As if human reason were deputed to revise the course of Divine Providence! As if when the hand of Omnipotence were most nearly or most strikingly visible in its dealings, man must interpose his nothingness and vanity! Human executions are at any time a sufficient invasion of divine prerogative: but a human execution for a mystery of God's creating, a case where man should pause with feelings of wonder and reverence — what more daring or unholy in the sight of heaven! Some of the ancients, we are informed, regarded with peculiar sanctity, and paid especial honors to the insane. How much more appropriate and well-seeming, at that, than to oppress them with unmerited and unconscious sufferings?

No! gentlemen; on this point of judging of the responsibility of the insane for their acts, you will not take the opinion of theoretical speculators, viewing the subject from a distance, and starting, as we conceive, from false notions of the need of society for protection and of the expedient mode of securing it; but you will go to those practically acquainted with the matter, and who have met it face to face in all its bearings. Ask of the friends and medical curators of the insane, how they may be best controlled, and what motives and methods may be best brought to bear upon them. Ask of the judges, themselves, who are so frequently called upon to try these cases. They will not tell you to take theories and speculations for your guide, but to look into the facts of each case for itself, and judge as you would like yourselves to be judged under similar circumstances. Much as they are supposed to

be fettered by the dogmas of ancient law, when are they to be found consenting to the execution of a man of whose insanity the testimony raises a probable presumption? On this point, I cannot but draw attention to their real sentiments and actual decisions, as contrasted with their legal phraseology. Thus, look at the direction of Lord Kenyon, in *Hadfield's case*, (already alluded to,) advising a dropping of the prosecution, though no relaxation of the old rule of distinguishing between right and wrong seems to have been permitted. A case where the prisoner was confessedly capable of making the distinction, and whose very homicidal deed was based upon the expectation of its consequences. So, look at the advice of C. J. Tindal, in the late case of McNaughton, (also quoted,) to the solicitor-general to the same effect; and yet followed by a charge to the jury, which, if they had regarded in its literal phraseology, it seems to me could hardly have led to an acquittal of the prisoner, short of a violation of their oaths. So I draw the same argument from the *practical* result of the late opinion of the judges in the house of lords, which has been so much urged against us. The jury may have understood, that after McNaughton was acquitted, as alluded to by the state's attorney, one of the two houses of parliament, the Lords, demanded of the judges collectively, their opinion in regard to certain points connected with the defence of insanity — Whether, as the law then stood, it admitted the excuse of certain specified kinds, or degrees of insanity, and whether some precise rule might not be laid down which should cover all shapes in which the defence should arise.

What was the practical reply of the judges? That they were unwilling to give any answer which might serve for a general rule on this point, but that every case must be tried on its own merits. They say, “they deem it at once impracticable, and at the same time dangerous to the administration

of justice, if it were practicable, to attempt to make minute applications of the principles involved in the answers given by them to their lordship's questions." They therefore narrowly confine themselves to the abstract questions proposed. Mr. J. Maule, who delivered a separate opinion, goes even farther in declining to lay down any precise rule, which should serve as an unbending precedent. In the debates which preceded the putting these questions, in the House of Lords, Lord Lyndhurst, the Lord Chancellor, had also expressed himself with great doubts of the propriety of undertaking to make a universal declaration of law in the matter. His lordship had perhaps his experience fresh in mind of trying *Offord's case*, (reported in 5 Car. and Payne,) where, upon a state of facts quite similar to the present, the jury had found a verdict of acquittal. So, also, I might instance the conduct of the trial of Oxford, which occurred in 1839, (rep. in 9 C. and P. 525,) as indicating the most liberal and humane regard to the rights of the insane, on the part of the presiding judges. The course of the New Hampshire judges in *Prescott's case*, just alluded to, affords another specimen, also, of judicial tenderness and consideration in dealing practically with the defence of insanity.

But I trust I have said enough to dispose of the theories and theoretical speculations, regarding the punishment of the insane, which are afloat in the community, and which may reach your notice more directly through some of the citations which the state's attorney has intimated he is about to make in this case. It will be sufficient for you, I doubt not, to apply the law as it is, and as you will receive it from those practically best skilled to explain its application, without undertaking to legislate upon this unfortunate prisoner's case, in reference to doubtful propositions of expediency and general good. You are satisfied also, I apprehend, that insanity, when a real defence, is a just one, and that of all others, it should

perhaps be listened to with the greatest care and deliberation, and the most scrupulous solicitude to guard against error.

If the prisoner then, before you, were really insane at the time of the homicide, he has a defence above reproach and as solemnly to be regarded as any other which could be named.

Was he then insane at the time of the act? And how are you to be satisfied of it?

What is Insanity?—And such Insanity as exonerates from criminal responsibility?

(Mr. BEMIS at this point suspended his remarks, to allow the introduction of the additional testimony of the prosecution as above noticed, having spoken a little short of an hour. At 9 A. M., Wednesday morning, after recapitulating briefly, he resumed as follows.)

You are somewhat singularly situated, gentlemen, in this regard. All of you, perhaps, come here with little or no experience on this head, and yet the defendant's life depends on your decision of this issue of sanity or insanity. Of course, in the short interval which this trial will occupy, you cannot inform yourselves to any satisfactory extent upon this great and difficult subject. What course, then, will you pursue to discharge your duty between the State and the prisoner? Your own best judgment must dictate upon whose opinion or judgment in the matter you will rely; for, certainly, except in a very plain case, you will not be willing to form, and be governed by one of your own. Shall it be according to the statements of the respective counsel, (perhaps as unacquainted with the matter as yourselves); the direction of the learned judges on the bench; or the views and opinions of the witnesses who shall be produced upon the stand?

For our own part, so far as judgment and opinion is concerned, we shall only ask you to believe such as proceed from witnesses, whose long experience and familiarity with

this subject, will place their statements, as we hope, above the reach of cavil or doubt — men, who, if their candor and veracity is equal to their professional skill and scientific reputation, will give you such light, we trust, on this matter, that you may feel safely authorized to act without a personal investigation of the medical considerations involved in it. We shall not ask you to surrender to them any of your prerogative of deciding upon the facts at issue, but shall offer them as competent advisers, to whom you may be supposed to come for an opinion, after having satisfied yourselves what facts, and occurrences, and symptoms, really exist in the case. If you esteem them the competent advisers upon these points of skill and difficulty, which we hope they are entitled to be, I think you will then be at once prepared to discharge your duty in a self-satisfactory and intelligible manner.

Our course of defence then, will be, to show you the facts and appearances in the case, and then call competent judges to inform you of what those facts and appearances are indications.

Meanwhile, before addressing myself to the proofs in the case, and to the opinions of the medical witnesses, I may facilitate the inquiry we are about to prosecute, by briefly touching on some of the more general manifestations and characteristics of the disease we seek to investigate: — not with any professed scientific accuracy, but in a general and popularly superficial manner.

Insanity, then, as I understand it, is regarded by the best authors as a disease, and subject to medical or professional treatment, as much as any other physical malady. Whether the brain is the sole, or the chief seat of the affection, it is not now necessary to assert. But that the disorder has the essential characteristics of disease, and that it yields to the laws of professional treatment, more or less understood, is, I believe, well agreed. According to the best writers, it seems

to be considered under two great divisions — idiocy or imbecility, and mania and (its consequent) dementia. It is with mania alone, or active insanity as I may call it, to distinguish it from the other kinds of passive insanity, that we have to do on the present occasion. But mania is subdivided into various distinctions, as monomania, moral insanity, &c.

Without going at all into these, permit me to notice a matter bearing upon the general subject of insanity, which will hereafter show itself in the highest degree important.

A common error prevails in regard to derangement, that it must be total in its character; either manifesting itself in wild and ungovernable, and incongruous actions, or in stupid and passive imbecility; and that one cannot appear like other men in most respects, ordinarily, and yet be the subject of insane treatment for some particular failings in judgment and conduct. This was the old notion of doctors and judges. An English judge, (Mr. J. Tracey) in 1723, laid down the law that for a man to be insane, *he must have no more reason than an infant, a brute, or a wild beast*. Another English judge, (also of an early day, I presume,) proposed a *knowledge of the multiplication table* as a test of legal sanity.

But it is now well settled, no less in medical science, than in law, that one may be sound in most respects, and yet insane in others, and therefore free from responsibility for acts springing from the particular unsoundness. This doctrine, (so far at least as criminal responsibility is concerned,) seems first to have been incorporated into the law of England, and so by analogy into that of our own country, through the influence of Mr. Erskine, the celebrated English lawyer, in *Hadfield's case*, already alluded to. (27 Howell, State Tr. 1281.) The particulars of that case, and its bearing upon the present, I shall have occasion to allude to, in another connexion. But two anecdotes are related by Mr. Erskine, in the course of that trial, so *appropos* to the point in question, that I do

not know that I can furnish a better illustration of what I desire to elucidate, than by quoting them at length. They are somewhat familiar to the legal profession, but they will probably bear repeating in this connexion.

“I well remember,” says Mr. Erskine, “examining for the greater part of the day, in this very place, (the Court of King’s Bench,) an unfortunate gentleman who had indicted a most affectionate brother, together with the keeper of a mad-house at Hoxton, for having imprisoned him as a lunatic ; whilst, according to his evidence, he was in his perfect senses. I was, unfortunately, not instructed in what his lunacy consisted, although my instructions left me no doubt of the fact ; but not having the clue, he completely foiled me in every attempt to expose his infirmity. You may believe that I left no means unemployed which long experience dictated ; but without the smallest effect. The day was wasted, and the prosecutor, by the most affecting history of unmerited suffering, appeared to the judge and jury, and to a humane English audience, as the victim of the most wanton and barbarous oppression ; at last Dr. Sims came into court, who had been prevented, by business, from an earlier attendance ; from him I soon learned that the very man whom I had been above an hour examining, and with every possible effort which counsel are so much in the habit of exerting, believed himself to be the *Lord and Saviour of mankind* ; not merely at the time of his confinement, which was alone necessary for my defence ; but during the whole time that he had been triumphing over every attempt to surprise him in the concealment of his disease. I then affected to lament the indecency of my ignorant examination, when he expressed his forgiveness, and said with the utmost gravity and emphasis, in the face of the whole court, ‘I am the Christ ;’ and so the cause ended.”

The other anecdote is one related by Mr. Erskine, as men-

tioned to him by Lord Mansfield. "A man by the name of Wood," said Lord Mansfield, "had indicted Dr. Monroe for keeping him as a prisoner, (I believe in the same mad-house at Hoxton,) when he was sane. He underwent the most severe examination by the defendant's counsel, without exposing his complaint; but Dr. Battye, having come upon the bench by me, and having desired me to ask him what was become of the princess whom he had corresponded with in cherry-juice, he showed in a moment what he was. He answered that there was nothing at all in that, because, having been (as everybody knew) imprisoned in a high tower, and being debarred the use of ink, he had no other means of correspondence but by writing his letters in cherry-juice, and throwing them into the river which surrounded the tower, where the princess received them in a boat. There existed, of course, no tower, no imprisonment, no writing in cherry-juice, no river, no boat; but the whole the inveterate phantom of a morbid imagination." "I immediately," continued Lord Mansfield, "directed Dr. Monroe to be acquitted; but this man Wood, being a merchant in Philpot Lane, and having been carried through the city in his way to the mad-house, he indicted Dr. Monroe over again, for the trespass and imprisonment in London, knowing that he had lost his cause by speaking of the princess, at Westminster; and such," said Lord Mansfield, "is the extraordinary subtlety and cunning of madmen, that when he was cross-examined on the trial in London, as he had successfully been before, in order to expose his madness, all the ingenuity of the bar, and all the authority of the court, could not make him say a single syllable upon that topic, which had put an end to the indictment before, although he still had the same indelible impression upon his mind, as he signified to those who were near him; but conscious that the delusion had occasioned his defeat at Westminster, he obstinately persisted in holding it

back. And it was only by proving the particulars of the former examination, that Dr. Monroe established his innocence of the charge."

These instances serve to show the possible existence of partial insanity, or monomania, and its recognition by the courts of law. But monomania is of various kinds; as, *homicidal, suicidal, monomania with a propensity to steal, &c.* Again, monomania may extend to the intellectual faculties, or be confined to the affections and sentiments alone, in which case it is usually termed moral insanity. We consider the prisoner's, a case of homicidal monomania; intellectual, also, in its character, and so, clear of the difficulties attending the disputed head of moral mania.

But, perhaps, rather than to attempt its scientific diagnosis, it may aid the perception of its features, to adduce the general particulars of some other similar cases, which are reported to have occurred like it, and which have been made the subject of judicial discussion. Out of a large variety at hand, I select a few most in point. *Hadfield's* has been already alluded to. But as the particulars have not yet been recited, and as its bearing upon the present is important in a legal point of view, I will now narrate them more at length.

Hadfield was tried for shooting at King George the Third, in Drury Lane Theatre, in the year 1800. Fortunately his pistol missed its aim, and no injury was done his majesty. But as the attempt itself was high treason by the law of England, he was tried for his life before the Court of King's Bench. At his request, Mr. Erskine, then considered the most able advocate at the English bar, was assigned him for counsel; and he defended him in an argument which is generally considered one of the most eloquent and profound ever delivered by that distinguished lawyer, and which has since been constantly referred to as a fund of illustration and reasoning on this difficult subject of insanity.

The facts attending Hadfield's case were mainly these. He had been a soldier in the army, and had received a dangerous wound in the head, which made him insane for a time, and he was discharged from the service. Subsequently he was subject to a partial derangement every year, during the spring and summer months, which made him imagine that he held intercourse with the Deity, and was himself a Saviour like Jesus Christ. His actions also during these periods were frequently the most extravagant and irrational. A few days before the attempt in question on the king's life, he professed an intention of killing one of his own children, of whom he was ordinarily, particularly fond, saying that he was commanded to do so by the voice of God: and had it not been for the interference of his wife and some other friends, he would probably have carried his intention into effect. Between this occasion and the time of his attempt upon the king, he frequently talked in an incoherent and blasphemous manner. Some evidence went to show that he attended the preaching of a fanatical clergyman, and that from him he might have got the delusion which ultimately led to the criminal act, namely, that he was destined to be the Saviour of the world, and that he could only fulfil his mission by giving up his life: but that as he was not permitted to take it by his own hands, so he must perform some act which would subject him to capital punishment by the laws. Accordingly, as the testimony went to prove, he procured a pistol, and having carefully loaded it, repaired to the theatre, and took a station where the king would be in full view as he entered. Having waited for his appearance nearly three quarters of an hour, he rose with the rest of the audience on the king's entrance, and taking deliberate aim, fired, but with no effect, as above mentioned, the slugs going above and below the king's person. Being shortly after arrested, though without any attempt on his part to escape, he said he knew perfectly well

that his life was forfeited ; that he was tired of it, and regretted nothing but the fate of his wife ; that he did not intend anything against the life of the king ; he knew the attempt, only, would answer his purpose. He spoke with calmness, and without any apparent derangement. Many witnesses testified that in his whole conduct in the theatre, they witnessed no marks of mental aberration.

The result of the trial was, that Lord Kenyon advised the stopping of the prosecution, and he was accordingly acquitted. Being committed to one of the insane-asylums in the neighborhood of London, he ultimately proved a decided maniac, and remained in custody till his death, which was reported in the newspapers a few months since.

The law of this case is perhaps more important than the facts as they have been quoted, for the purpose of illustration, and I shall accordingly have occasion to refer to it again, in another connexion.

The next case to which I shall call your attention, is one where the insanity was accompanied with what is called hallucinations ; the hearing of false voices or other delusion of the senses. It is that of *Jonathan Martin*, tried in England, in 1829, for setting fire to the beautiful cathedral of York, which was laid in ruins by the means. (The case is found reported in Shelford, page 465.) Martin had been under treatment as a lunatic some years previous to the commission of the act in question. His insanity, then, chiefly consisted in an affliction growing out of his dreams. He particularly labored under delusions about religion and the clergy. After his discharge from the lunatic-asylum, eight years and upwards previous to his trial, he had followed the trade of a bookseller. He had borne the character of a very religious man, and was by no means thought by his neighbors a person of disordered reason. Some persons had heard him speak of having dreams, but nothing showing insanity of mind. He

himself had told one witness that he had destroyed the minster for the glory of God, and the good of the people of England, particularly of the people of York, who, when they found their fine cathedral gone, would disperse to other places, where they would hear the gospel; that he felt no condemnation of spirit; on the contrary, he was quite happy, and praised God for strengthening him to do so good a work.

The prisoner, in his defence, entered into a long and very incoherent story. It was in substance that he had two dreams, which first inspired him with the thought of setting fire to the minster. He had first written five letters to the clergy, in the hope of obtaining an answer, but had received none. He had therefore petitioned the Lord what to do, and had had a dream that a cloud hung over the minster, and then came and settled on his lodgings. He heard a voice which told him it was his destiny to destroy the cathedral, on account of the misconduct of the clergy. He had felt troubled by this, night and day, until he prepared to accomplish his design. For a while he had wavered, on account of his wife and child, but a voice again urged him, saying, "What thou doest do well; go forward and complete the work." He then left his wife, went to York, and set fire to the cathedral. Several medical men, conversant with the treatment of lunatics, who had examined Martin subsequent to the fire, were of opinion that he was a monomaniac on this subject of dreams and the clergy, and that he had probably committed the act under the influence of that delusion. This prisoner also was acquitted on the ground of insanity.

Offord's case, the next which I shall mention, has been alluded to as having been tried before Lord Lyndhurst, then one of the barons of the Exchequer. This occurred in 1831. (5 C. and P. 168.) The prisoner was indicted for the murder of a man by the name of Chisnal, whom he shot in the streets of Hadleigh, without motive or provocation, so far as appeared.

The defence being insanity, the prisoner's counsel showed that he had labored under the idea that he was the victim of persecution and abuse, and that persons were constantly issuing warrants against him to apprehend him. Under this delusion, he would stop strangers in the street, and abuse them for their ill treatment towards him. At the time of his arrest, there was found in his pocket a list of names, headed, "list of conspirators against my life;" and the deceased's name, Chisnal, was found among them. Another paper was also found upon him with the inscription, "this is the beginning of the attempt upon my life." The medical witnesses who were called in the case, gave their opinion that he was a monomaniac, and the jury acquitted him.

Oxford's case, (9 C. and P. 525.) may also be alluded to as furnishing, in its facts, some parallel to the defendant's, though to my view, it is in all its features, a much less decided one of insanity than his. Oxford was tried for shooting at Queen Victoria, in 1839. He was a boy, or young man of eighteen or twenty years of age, and as may be remembered by some of the jury, attempted to shoot the queen, as she was riding out one day with Prince Albert. He fired two shots at the royal carriage, neither of which, fortunately took effect. Like Hadfield, he was also tried for high treason, in thus making an attempt on the life of the sovereign. It appeared from the evidence, upon the trial, that he always had been a person of singular habits, indulging at times in fits of immoderate laughter, without any assignable cause, and at others, being guilty of acts of malicious mischief, entirely gratuitous and unprovoked. He was sometimes taciturn, and at others, absent-minded. On one occasion, he frightened a lady, by jumping up behind her coach, and persisting in riding all the way to her house, so that his mother was obliged next day, to go and make an apology, to save him from a criminal complaint. At another, being instructed

by his employer to bottle some porter, he went through a great part of the operation, by pouring the porter into the hollow bottoms of the bottles, instead of the necks, so as to waste nearly all the liquor, though seemingly unconscious of what he was about. Perhaps the strongest evidence of his mental unsoundness, as bearing upon his attempt upon the queen's life, was afforded by some papers found in his possession, purporting to set out an organized and armed conspiracy against the government. In these papers, he seemed to have imagined himself at the head of a large combination, extending over the country, and under the title of Young England, to be in correspondence with its principal leaders, and directing their movements. That the conspiracy was imaginary, was evident. The medical witnesses were all of opinion, that the facts showed monomania, and notwithstanding the able, though highly liberal and humane prosecution on the part of the crown, he was acquitted by the jury.

I will cite one other English case of recent occurrence, which has been already mentioned, but which has so important a bearing upon the present, that it cannot well be overlooked. I refer to *McNaughton's* trial, for shooting Mr. Drummond, the private secretary of Sir Robert Peel, in March last. (I gather the particulars mainly from the report of the London Times, March 4th and 6th, 1843.)

McNaughton was an entire stranger to Mr. Drummond, never having seen him, probably, more than three or four times in his life, and then only, in the street, as he passed back and forth to the public offices. Undoubtedly he mistook him for Sir Robert Peel, which gave rise to the fatal catastrophe. For several days, he had been noticed loitering about the street which Sir Robert usually took, in going to, or from the treasury, and having, as it is supposed, ascertained to his satisfaction, which the minister was, he took his opportunity when Mr. Drummond was passing him, to shoot him with a

pistol. This was in open day, and in the crowded street. The ball took immediate effect and caused Mr. Drummond's death. McNaughton, however, was only prevented from firing a second pistol which he had with him, by the interference of the by-standers.

Being immediately arrested, he was only heard to say, "he or she shall trouble my peace no longer." Subsequently he expressed some surprise at hearing that it was not Mr. Peel whom he had killed. Being thought to be in some degree disordered in his mind, he was visited by several medical men in prison, before trial, and the particulars of his state of mind as they appeared to them, and as made known by other testimony relating to his early history, I will now briefly narrate.

It seemed that he was a Scotchman, belonging to Glasgow, and had followed the trade of a wood-turner. For the last year or more he had been residing in London. His habits were those of an industrious and thriving mechanic, and he was shown to have a great taste for study, and to have even gone so far in his thirst for information, as to have attended a course of medical lectures. For several months back, and even for two or three years prior to the fatal deed, however, he had been noticed to be laboring under a kind of melancholy, or fancied apprehension of danger, amounting almost to insanity. He believed that he was surrounded by enemies or persecutors, who made it their object to disturb his peace. Sometimes it was the Catholics or Jesuits, and sometimes the Tories, who were thus leagued against him. He told his father, and friends, of these troubles, and sought their interference to protect him. For the time, perhaps, they could succeed in quieting him; but ultimately his imaginations would become more troublesome than before. He finally became so thoroughly convinced of the reality of the evils which he described, that he applied to several magistrates for

warrants against certain persons whom he accused, but who were really entirely innocent of any such charge. According to his own story, he was tormented with these delusions for several months previous to the assassination, and he could not find rest from them, night or day. He took a voyage, he said, to France, to get rid of his persecutors ; but no sooner had he landed, than he saw one of his spies peeping out from behind the sentry box. One of the witnesses, a member of parliament, to whom he had applied for protection against his enemies, had even written him, that he thought his mind was disordered. But it did not appear that the prisoner, or his friends for him, had ever sought medical advice, as for one positively diseased in mind. What particular connexion his delusion had with the prime minister, was not shown, further than that he told Dr. Munroe, one of the physicians who visited him, that the man he shot, was one of the crew leagued against him ; and that when he fired, all the sufferings he had felt for months and years, came up into his mind, and he thought he should obtain peace by destroying him.

Many medical witnesses were summoned on behalf of the prisoner, and they all gave their opinion — some of them in the strongest terms — that he was a monomaniac. The presiding judge, C. J. Tindal, having inquired of the prosecuting officer if he had any rebutting testimony to counteract this, and being answered that there was none, suggested the propriety of dropping the prosecution, which was immediately acceded to by the solicitor-general. Accordingly, after a brief charge from the court, that they must acquit the prisoner, if they believed him incapable of distinguishing right from wrong, the jury at once found a verdict of acquittal.

This case is particularly noticeable for the existence of the idea on the part of the insane man, of a conspiracy formed

against him, and of his delusion taking the shape of a general apprehension of persecution and abuse.

Gardiner's case, which is one of very recent occurrence in our own country, may be instanced as another of the same kind. A young man by the name of Gardiner, the jury may recollect, was tried in Baltimore, for stabbing Mr. Wickliffe, the Post-master General, last August. The two were going down the Potomac, or Chesapeake Bay, in a steamboat together, and young Gardiner, without any warning or provocation, drew a dagger and stabbed Mr. Wickliffe in the breast. Fortunately the wound was only slight. There being a suspicion that Gardiner's mind was affected at the time of the act, a commission of inquiry was held at Baltimore on his conduct, and they pronounced him insane. It seemed that he had been a person of very studious habits, and for some time previous to his outbreak, had exhibited symptoms of alienation of mind. His mother had even taken advice on her son's case, but the physician had not treated it as one of positive insanity. The prisoner himself said, that at the time of committing the act he believed that Governor Wickliffe was in a conspiracy with others on board, to throw him overboard, and that he acted in self-defence. He could give no reason for his imagination, but only supposed that he was to be the victim of a foul conspiracy. (The above particulars, like those of *McNaughton's* case, I can only quote from newspaper authority. I find them in the *National Intelligencer*, of August 5th, 1843.)

I will venture to trouble you, gentlemen, with one other American case in this connexion, which I consider highly analogous to the present. It is found in Dr. Woodward's Tenth Annual Report, before quoted, page 88. Only the initial D. is there given; but, as I am informed by the Doctor himself, it relates to a man by the name of *Davis*. Davis was

complained of to the grand jury in a neighboring county, for the murder of a Mr. Edwards. He had been addicted to intemperance, and at the time of the homicide was nearly in a state of *delirium tremens*. He said he heard General Washington call out to him, as he rode in a chariot through the air, to take the life of Edwards without delay. Accordingly, he hastened with all speed in pursuit of him, and finding him, struck him a blow with an axe, which immediately caused his death. The paroxysm of insanity, if it were that, (and Dr. Woodward does not hesitate so to style it,) passed off before the trial. Yet the grand jury did not see fit to find a bill, but acquitted him on the score of insanity.

The cases to which I have drawn your attention as above, among other features of insanity, contain two or three points which we suppose will be strongly brought out by the prisoner's. Among these are the hearing of false voices, the idea of the existence of conspiracies or persecution, and the possible duration of a paroxysm of insanity. Allow me to quote a few more authorities, medical and legal, to each of these points.

Hallucinations, in the point of hearing false voices, like that in the case of Davis, just alluded to, are a well established symptom in many forms of insanity, according to the medical authorities. Their effect upon the conduct of the insane individual, who supposes himself to hear them, is undoubtedly as strong as real voices would be to a sane man. Thus Esquirol, (2 *Maladies Mentales*, page 794,) after remarking that these hallucinations impel monomaniacs to murder, quotes the case of a Prussian farmer, who thought he heard an angel ordering him, in God's name, to sacrifice his son on a funeral pile. The father directed his son to help him bring wood to a designated place, and make the pile. The son obeyed, and the father stretched him on the funeral pile and offered him as a victim. It was his only son.

The same writer remarks, (vol. 1, *Maladies Mentales*, 199,) that out of an hundred insane persons, four-and-twenty, at least, have hallucinations.

So Marc, another great French name on the subject of insanity, says, (*De la Folie*, 1, page 188,) "the sense of hearing is the subject of hallucinations, in as great a proportion as two-thirds of all that occur."

On the point of the belief of the insane in imaginary conspiracies and persecutions, Winslow, a recent English writer, says in his "Plea of Insanity in Criminal Cases," page 33, — "In some of these cases of homicidal insanity, the unfortunate patient is drawn to the commission of the crime, under the notion that conspiracies are formed against him, and that it is necessary to take away the life of some human being, in order to preserve his own. This kind of illusion is a common feature in cases of insanity."

I have at hand, also, a celebrated French case, illustrating this point, which, at the expense of being tedious, I will venture to recite. It is that of a young man named *Sclafer*, tried at Bordeaux, in September, 1838, for the murder of a girl named Maria Rousseau. The case is found in 2 Marc, (*De la Folie*,) page 35.

The prisoner was a young man of liberal education, about one-and-twenty years of age, who, just previous to the homicide, had become devoted to religious thoughts and acts. He had long been haunted with the idea that people were insulting him. He could not go out without imagining himself the subject of ridicule. He thought that he was called by opprobrious names, and pointed out as a mean or worthless fellow. It did not appear that he had any ill-will at all against the girl, nor, (as was surmised by the prosecution,) any unlawful passion towards her. One night, when Maria went to carry the light up into his study, another domestic was alarmed by hearing her scream and fall. She ran up, and found her on

the stairs weltering in her blood, and Sclafer striding up and down the chamber, with a bloody sabre in his hands. She was frightened and ran out. Sclafer being immediately arrested, confessed the deed, but denied that he had committed any crime. He said that he had done the act out of revenge for being called "rake," "libertine," and other hard names by the girl. Soon after his arrest he tried to starve himself, and went without food ten or twelve days. Five or six days before his trial, he made an unsuccessful attempt to escape. When about to be brought up to trial, he stripped himself naked, and refused to be arraigned. They dragged him into court, as it were, and there, at first, he broke out in the most violent abuse of the court, jury, audience, and his own lawyer. After the trial commenced, he constantly interrupted the witnesses, to contradict or insult them. Especially he denied the imputation of being insane. His aunts, with whom he had lived, proved that they had applied to a physician for advice, believing his mind to be affected. The physician, however, had not judged it best to commit him to an insane-hospital, though he thought there was a probability of his eventually becoming insane. A journey from Bordeaux to Paris was testified to, in which he was constantly complaining of the insults of the people whom they passed, and of his fellow-passengers; that the latter threw out pieces of paper, with his name written on them, instigating the by-passers to call out after him. A number of times he went so far as to demand his baggage, and to leave the coach. Nobody in reality had offered him the least insult. His conduct in this particular was so outrageous after reaching Paris, that his brother, a medical student, set out with him immediately to return. When this portion of the testimony was delivered, the prisoner interrupted it, declaring that it was true he thought himself insulted, for he heard voices calling him by name, and using this and that epithet; that he asked the

conductor if he didn't pay the postilion twenty or thirty francs to insult him ; and if a man in the stage didn't break his sword-blade over his knee. These statements, the conductor testified, had no truth in them, whatever. Other evidence showed that the prisoner had hallucinations of the sense of hearing. To the last, he disowned and repelled the defence of insanity. He said his lawyer was a traitor to him, and thanked the advocate-general for calling him sane.

His own story was, that he felt badly the day of the homicide, and particularly at the time Maria came into his study. She didn't speak to him at first, but at the moment when she was shutting the shutters, he heard her distinctly call him "a libertine," "a rake," and "a bad fellow." These words enraged him ; he lost his self-control, seized the sabre which he had never touched before, and struck her without cessation, though not with a perfect consciousness of what he was doing. He said he felt himself pushed by a will foreign to his own, and which he could not resist.

During the trial, one of the medical witnesses instanced the case of a monomaniac who had fired at a person, believing that he had insulted him. Sclafer broke out, "*he* was not a monomaniac, but an assassin. He played the monomaniac, no doubt, to defend himself ; and cheated the doctors." The medical witnesses in attendance, gave their opinion that the prisoner was insane ; and the result of this singular trial was an acquittal of the prisoner on that ground. Marc does not hesitate to consider it a case of homicidal insanity, springing from the hallucination of hearing a false voice.

Some allusion has been made by the state attorney to the shortness of the attack of delirium, which Rogers suffered ; and witnesses have been called to show that a few weeks after the homicide, after he was transferred from the prison to the jail, he appeared as rational as any other person. To show you that the briefness of its duration does not negative the

idea of the affection amounting to positive insanity, and that such attacks are often accompanied with partial or total unconsciousness of what is done in them, allow me again to have recourse to medical and legal authorities.

According to Esquirol, (*Maladies Mentales* 2, page 30,) "the course of monomania is abrupt and rapid: its termination often unexpected; it is to be judged of like other forms of mental alienation by crises more or less sensible; but it is not rare, *that it terminates all of a sudden, without a cause, without a perceptible crisis, or in consequence of a vivid moral impression.*"

So, Marc, (*De la Fol.* 2, page 509,) says, "in sudden and transitory insanity, which ought to be considered as an acute insanity, there is almost always a notable acceleration of the pulse, a true febrile state. *Almost always, too, the extravagance and atrocity of actions committed during the paroxysms of transitory insanity, particularly when those paroxysms are brief, result from hallucinations or illusions. It must not be forgotten, that the paroxysm once passed, the insane hardly ever preserve a recollection of it, and have but a confused remembrance of it. It is with them as if in dreams.*"

So, Winslow, in his *Plea of Insanity*, page 69, remarks, "in some instances of homicidal insanity, the patient, after recovery, has no recollection of any of the circumstances which transpired during the paroxysm. A man under Dr. Haslam's care, during a fit of furious insanity, had destroyed two children and a woman. He was confined, and died in a mad-house. On several occasions Dr. Haslam endeavored to draw from him some account of the motives, which induced him to destroy the children and the woman, but he uniformly and steadily persisted that he had no recollection whatever of such an occurrence. He said he understood he had done something which was very wicked, and for which he was con-

fined : but he thanked God that he had no more memory of what had passed, than if he had committed it in his sleep. Another case is related by the same authority, of a lady, who during an attack of insanity, attempted to commit suicide. After the lapse of three weeks, as she was sitting in her usual manner, she uttered a shriek, appeared for a few moments in a state of alarm and confusion, and suddenly recovered. Dr. Haslam observes, ‘of her repeated attempts at suicide she had not the slightest recollection.’”

So, Dr. Taylor, a late English writer on medical jurisprudence, remarks, “it is proper that a medical witness should remember, in examining an accused party, who is alleged to have committed a crime while laboring under insanity, that the plea may be good, and yet the individual be sane when examined. This was observed in the case of a lunatic who killed his mother, in February, 1843. There was no doubt that he was insane at the time of the act ; but two days afterwards he was found to be of perfectly sound mind. This sudden restoration to reason, is sometimes met with in cases of homicidal mania.” (*Taylor’s Med. Juris.* page 651.)

A striking case of this kind is mentioned by Marc, (2 *De la Fol.* page 481,) in the instance of a servant girl named *Maria Lorentzen*, who attempted to strangle her mistress, in a state of somnambulism or monomania, in Copenhagen, in the year 1821. The girl had been sitting up with her mistress, and having conceived the idea of suffocating her, (from what motive she could never explain,) was only prevented from completing the deed, which she had actually begun, by a person’s ringing at the door. The mistress, thinking that the girl was in a state of somnambulism, while thus endeavoring to smother her, told her to go to the door, and she mechanically obeyed. Oppressed by the idea then, that she had killed her mistress, or done her some fatal injury, she rushed out of the house with an intention of destroying herself. But think-

ing that she was watched, she went and delivered herself up to justice as having committed the crime of murder. The real facts were made known, and the girl having undergone a judicial examination was acquitted from any criminal charge, as being temporarily deranged. She was placed under medical treatment, and in a very few weeks recovered her reason.

So Dr. Wyman, the late superintendent of the McLean Asylum, mentioned a case on Prescott's trial, in which he was a witness, where he had known a young gentleman, who had come to Boston to make a visit, be suddenly seized with a paroxysm of derangement, and under its influence rush into a shop, and attempt to stab the woman who kept it. Being secured, and afterwards brought to the asylum, he had remained there but a week, when his father, who came for him, found him perfectly recovered. He had no recurrence of the malady afterwards. (*Prescott's trial*, before referred to, page 71.)

I will mention one other case, on Dr. Brigham's authority, from the report of the Hartford Retreat, already referred to. (Eighteenth Report, page 18.) "It is that of a lady, the mother of three children, one of whom she suddenly killed by repeated wounds with a hatchet. She had not been considered insane previously, though she had for some time been somewhat unwell, and low-spirited. Soon after the act, she endeavored to kill herself, and was brought to the Retreat a decided and wretched maniac. For several weeks she remained without much change, rather stupid, as if having no recollection of the past. After this, her bodily health began to improve, when suddenly the memory of what she had done seemed to return, and the agony she was then in for a few hours, until her feelings were overcome by opium, was indescribable and most painful to witness. She however recovered, and has now been well for nearly a year. She has often

assured me since, that she could recollect no motive whatever, that induced her to commit the act, and does not believe that she thought of it until she saw the hatchet. Had this amiable lady and affectionate mother killed a neighbor or domestic, I fear there would have been difficulty in convincing a jury that the act was the consequence of insanity."

I have one other instance on my notes, of a similar character, (mentioned by Dr. Woodward, in his Tenth Report, page 93,) which I will forbear troubling you with at present, but which I may take occasion to refer the Doctor to, when he takes the stand as a witness.

But perhaps I am detaining you too long, gentlemen of the jury, from the facts and symptoms in the case now before you for judgment. Long since, you may have inquired in your own minds, 'what are the indications of insanity in Rogers's instance which you expect to prove, and from which we may judge whether it is analogous to those which you have laid before us and asserted were similar?'

I proceed then to state what these indications are; — to furnish a brief outline of his condition and state of mind, at, or about the time of the homicide, from which you will infer, whether a different version of this transaction is not yet to appear, and whether I was not correct in saying that little or none of the real truth, (if it shall prove such,) had yet been developed.

Thus far, then, the government has shown you no motive or inducement whatever, that could have led the defendant to commit the fatal deed of the 15th of June; unless the very doubtful statement of the convict Tulley raises a suspicion of general ill-will, on account of over-punishment some five months before, or unless some long-harbored resentment is made out of the phrases said to have been heard at the time of the act, "*I told you I would,*" and again, after the homicide, "*I have fixed the warden, and I'll have a rope round*

my neck before night." Other than these statements, which we hope to demonstrate to you, are incorrect, or founded in mistake, or are really unimportant, nothing whatever has been shown as an adequate excitement to this monstrous and appalling deed. We shall now expect to show you, that no motive of revenge, anger, or ill-will, in all probability, existed in Rogers's mind in regard to Mr. Lincoln. On the contrary, that he had expressed satisfaction with the part which he took in his additional sentence; that he had even said he had done better for him before the court than he expected; and that having but a short time to stay at the time of the homicide, he had expressed his determination to get along as peaceably as he could. We shall further show you that the defendant's character while in prison, though not of the most exemplary kind, was yet better than the average of the convicts; and that so far as his disposition could be manifested by the nature of the punishments he incurred, it was anything but that of a refractory, violent, or bad-tempered man.

But in regard to his state of health, bodily and mental, it has been already shown you by the prison-physician, that if not absolutely an invalid for the last six months previous to his outbreak, he had made repeated applications to the hospital, particularly within the last fortnight, for medical treatment, and, *had not received it*. That his last application on the morning of the homicide, was on account of, *a pain in his head*, and because, as he said, *he could not control his mind*.

Perhaps we shall be able to further show you some indications that the disease which finally overpowered his mind, began to take hold of him a month or more before the final crisis; but we shall not rely much upon the development of its symptoms till some three days previous to the homicide.

Monday night, the 12th, may perhaps be selected as the opening act of the unhappy tragedy which was to ensue. And if the case be one of pretence or counterfeiting, as has

been more than intimated by the state's attorney, I beg your attention to the time and place, when the prisoner took his first step towards carrying out his complicated contrivance. We shall show you that the watchman on duty that night, Mr. Gardiner, was roused at about two o'clock of the morning-watch, by a loud and long-continued scream or cry of distress ; — that having lit his lantern, and made endeavor to trace it, (in which he found some difficulty from the common opening of the cells into the corridor,) he at last found it to proceed from that occupied by Rogers ; — that going to it and putting his light up to the grated door, he found Rogers standing up before it, shivering, with his hands crossed upon his breast, and having the appearance of the greatest alarm and distress. To his inquiry, " what is the matter ? " Rogers begins that tale of apprehension and despair, which, we shall show you, forms the burden of his delusion all through his season of distempered disorder.

He tells Mr. Gardiner that he is going to die ; that he shall never live to get out of the prison ; that he has heard the voices of his fellow-convicts, Cole and Robinson, talking about his cell, and saying, that the warden was going to shut him up and he should never go out alive. To Mr. Gardiner's direction not to make the noise any more, he replies that he cannot help it — that he certainly has heard the voices — that they said the warden was going to shut him up in *solitary*, and he should never go out till he went out feet first — that he had been a very bad man, and was not fit to die — that he should never have come to this if he had taken his father's advice. During all this, he was in tears or giving signs of the greatest distress. Mr. Gardiner succeeded in quieting him, and he heard no more of the noise till towards morning ; and then, not so loud that he felt obliged to notice it.

Next morning, or during the day, Mr. Gardiner casually mentioned the occurrence of the noise, in the hearing of Mr.

Payne, the deputy-warden, and he thought proper to take notice of it as a violation of discipline, and accordingly had Rogers reported and left out.

This punishment, and the relative position of the prison buildings, perhaps demand some explanation here.

The prison-yard, as the jury may be aware, incloses two buildings ; the new prison, (so called,) containing the night-cells, in which the convicts ordinarily sleep, and the old prison, containing the warden's and guard-room, and the hospital, and which is now seldom used for the purpose of confinement, either day or night.

The practice of reporting and leaving-out, amounts to this ; that at night when the convicts go into the new prison for sleep and confinement, and the officers go in with them to oversee them, any officer who has any complaint to make against a convict, notifies the warden of it, and he directs the delinquent party as he comes to the foot of the stairs leading to the prison galleries, to stop while the rest go up, and have his case examined. This is called "leaving-out." If the convict is judged worthy of the punishment of being deprived of his bed for the night, he is not allowed to occupy his own cell, but is sent away to one of the cells on the lower floor, where he must either pass the night on the stone-floor, or upon a board covered with a blanket. This is being put into "*solitary*," as it is briefly called.

To resume, then, Rogers was left out on Tuesday night, and ordered into *solitary*, as a punishment for making the disturbance on Monday night. But before the evening of Tuesday, in fact some time in the course of Tuesday morning, Mr. Gardiner called Rogers to him to ask him again the occasion of his outcry and distress the night before.

He repeats the same story, and insists that he heard Cole and Robinson's voices, as he said he had, the night before. So convinced was Gardiner, that something really was the

matter with the man, that he interfered to tell Mr. Lincoln, when he found that he was left out for punishment, that he did not deserve it ; and that he was sure he had waked up out of a frightful dream, or was not right in his mind. Mr. Gardiner, I believe, will state that he made this representation to the warden more than once during the continuance of Rogers's complaint, whatever it was.

During the day of Tuesday, Rogers's conduct was carefully noticed by the officer having charge of his shop, Mr. Sargent, and full particulars of his appearance and actions then, will be given you by that witness, and also one other officer who had the more immediate oversight of his work, as well as by some of the convicts who worked in the same room. Their evidence, I think, will show, that repeatedly he applied to the officer for protection, or mentioned to them his story of anxiety and distress — that he should never live to go out — that the warden and other officers, were going to shut him up in the old prison in *solitary*, and that he should never live his time out, if they did — that they had employed the convicts, Sam Robinson, Jo Hutchinson, and Cole, to play the *popo*, or *checkerberry* game on him, which would turn his head in twenty-four hours — that he had got to die, and his time was short.

Tuesday night, the watchman's (Patterson's,) and a convict's testimony, (Savary, who was the privileged runner or sub-overseer of the shoe-shop,) will show you that the prisoner began again his cries of lamentation and distress. That threat of punishment, neither, or assurance of the groundlessness of his fears would pacify him ; and that he was more than ever under the influence of his delusions and imaginary fears. Wednesday morning he was showered, as the government-witness, Mr. Fogg, has already testified. We think his actions and appearance at the time, as they were seen by Mr. Sargent and Savary, had something more significant in

them, than Mr. Fogg knew of. To one, or both of them, Rogers insisted that he was as regular as ever, and yet his dress and countenance bespoke anything but a sane and self-controlling man. During Wednesday, the same witnesses, as before alluded to, who were present all the time in the shoe-shop, will show, as we believe, an aggravation or heightening of the defendant's disorder. Wednesday night, probably through the representation of Mr. Sargent, or some of the other officers, Rogers was allowed to occupy his own cell. This night also, he was not able to check his cries of alarm and suffering; and he was reported for punishment again, which took place Thursday noon; being this time by showering. Thursday morning, as Dr. Walker's evidence has already shown you, he applied for admission into the hospital, as having a trouble in his head, and was refused. During the day, the evidence will probably establish that he was in a constant state of agitation and distress; frequently in tears; sometimes seen with his hands clasped, and in the attitude of prayer; overheard by some near him to talk to himself, as if in distress, and then blaspheming; unable to employ himself at anything steadily, and frequently going up to the officer and beseeching his interference to save him from the imaginary punishment of being shut up and put to death.

We shall not lay much stress upon the point, that the showering, or the other punishments aggravated and increased his disease; though perhaps we may ask the medical witnesses some questions upon the general effects of punishment, in such a case, supposing the disease were real.

But after the showering on Thursday afternoon, we think it will appear, that the prisoner was wrought up to the highest pitch of distress and despair. Shortly before the fatal act, Mr. Sargent and Mr. Crowninshield, (a contractor in the prison for Rogers's work,) will give you the particulars of his falling down upon his knees to them, and begging them with

tears in his eyes, to save him from punishment — that they endeavored to assure him that no punishment was hanging over him, and sent him back to his work — that the prisoner's appearance made such an impression upon the latter, that he immediately went in quest of the warden to have him taken care of. Shortly after this, and immediately before the homicide, Mr. Braman, Rogers's immediate overseer, will tell you that he was in no degree quieted by the promises or representations of Mr. Crowninshield and Mr. Gardiner; but that he kept beseeching him to intercede with the warden, in his behalf; that he used the expression, among other things, "go and find the warden, and let him give me ten stripes, and have it over;" that he felt convinced at this time, that he should not live more than twenty-four hours, if he suffered the punishment which he was about to.

Such, we expect to show you, was the prisoner's state of mind and appearance, a few minutes before Mr. Lincoln entered the shop. Whether, seeing him, and with a stranger in his company, he thought his hour was come, and he must save himself, if ever; or whether a blind impulse, unaccompanied by anything like a process of reasoning, impelled him at that moment, to commit a slaughter of one who had been constantly mixed up in his thoughts, with the idea of evil and impending danger, we shall not undertake to explain. It belongs only to Omniscience, we believe, to penetrate the chaotic darkness of the disordered soul at such a moment, and throw light upon its hidden workings. The most security we can give you for his state of mind at that moment — and I admit it is the decisive one in this whole case — will be the statement of probabilities made by those whose long experience, and intimacy with insanity, will enable them to form some opinion upon the point, whether the light of reason was temporarily quenched, and distraction for the time being, reigned paramount in the soul. If we show you, that a few moments

before, his state of mind was such, that motive, reason, and the will were likely to succumb to the first impulse from without, the presumption of law, as well as the dictates of science and good sense, will undoubtedly authorize the conclusion that the same state of mind existed at the precise moment of the act. And it is in this way, that we shall be obliged to leave our case, so far as anterior proof is concerned. But I have not yet exhausted my statement of the evidence of the prisoner's insanity, prior to the act. Some allusion has been made already, to Mr. Gardiner, and Mr. Crowninshield's acting on the belief, *at the time*, that all was not right with Rogers's mind. These were not the only witnesses, as we shall show you, who were influenced in the same way, *before there was any occasion for the prisoner's pretending a part to conceal the commission of a crime*. We think, it will appear to you, that, *in all, there were no less than six or eight distinct intimations made to the warden, and deputy-warden, at different times, before the act was committed, that he was crazy*. To these intimations, as we shall show you, the warden invariably turned a deaf ear, blinded by his preconceived opinions about the man, or fatally misguided, as you will perhaps infer, by his prison-theory, "*that it would not do to admit the existence of insanity in such a case as Rogers's, or half of the men in the prison would be insane*." We shall further show, on this very point of mistake, if the court will permit the evidence, that Mr. Lincoln likened the prisoner's conduct, to another convict's, who, he supposed, was feigning insanity, but who afterwards proved, as events showed, to have been actually insane.

Under the same head of simulation, again, we shall ask your attention, to the evidence — so far as it makes out the fact — of the prisoner's frequently asserting that he was not disordered, or out of his head; but was as well as any body, and felt better for being showered, or getting some sleep, &c.

And under the same head, we urge your attention to his apparent readiness, at any time, to be convinced that his imaginations were all delusive; and to his desire that it should be so, if possible. •

Thus far, then, up to the time of the commission of the act, the proof would be such, we think, as that on the point of simulation, or actual affection, no jury would hesitate to conclude that whatever was the nature of the defendant's disorder, it was real and not pretended. Something, certainly, ailed him; what that something was, subsequent testimony, we hope, will demonstrate.

A little of the defendant's demeanor, after the homicide, (indeed, including his conversations with Mr. Fogg, a considerable,) has been testified to, already. But much more, and of the most decisive character, is yet to come.

Viewed in the light of a murderer, nay, according to the wishes of some of the officers, consigned already to the tender mercies of lynch-law, the unhappy defendant was put out of sight, as hardly entitled longer to the name of human being. Fortunately, the hand of benevolence, guided thither, by Divine Providence, on another errand, found him in his position of desolation and extreme peril.

A friend of the late warden's, the Rev. Louis Dwight, having occasion to visit the prison, to inquire after the condition of the deceased's wife and family, accidentally thought of seeing the prisoner. Being admitted to the cell in which he was confined, his practised eye in the diagnosis of insanity, was immediately struck with the probable symptoms of mental aberration. A startling doubt at once took possession of his soul, of the man's guilt, and he hastened away in quest of more experienced, and more skilful judgment than his own. The close proximity of the McLean Hospital, (its situation, you know, in the town of Somerville, is but a short distance from the prison,) and his familiarity with the super-

intendent, at once prompted him towards Dr. Bell. He finds him somewhat reluctant to make a visit of mere curiosity, as he supposed it to be — (for, Mr. Dwight, if I am not mistaken, carefully concealed from him, his opinion of the man's appearance,) — and it was only after suggesting to him, that it seemed a call of public duty, that he consented to accompany him.

Behold now a sagacious and profound observer of the disease in all its shapes, about to institute a deliberate and careful examination of the case! — One who goes with the belief, as he will probably tell you, that he was to see a real murderer, and no subject for the plea of exculpation from insanity. What chance for an ignorant and uneducated pretender to deceive him? You will judge whether the prisoner had any reason to anticipate his visit, or prepared himself to play off a part before him. You will judge, further, whether his conduct and conversation, in the presence of the Doctor, were involuntary and real, or assumed and fictitious. But I shall not go into the particulars of the Doctor's methods of examination, nor state the *data* upon which he made up his final opinion. He can detail them all much better than I can. It is sufficient to say, that that opinion, was not made up, till ample opportunities of observation, and repeated visits had satisfied him, that he could speak with confidence. And that opinion, if he repeats it as given on the former occasion, will be decisive, we trust, of the prisoner's state of mind, at the interval of, from two days, to a week and more, after the homicide.

But Dr. Bell will not stand alone, in his statement of the facts, and outward symptoms noticeable about the defendant at this time. Mr. Dwight — no small authority on the subject of insanity, from his extensive practical observation of the disease, in lunatic asylums, which have received a joint share of his attention, in connexion with prisons — will give you

the result of his observations, made separately, or in connexion with his friend. Besides these scientific witnesses, we shall have no little or unimportant testimony, to add from common observers — the officers of the prison, and the convicts who were permitted to see Rogers. All together, we think, will establish an undeniable and unimpeachable case of insanity, subsequent to the homicidal act. Reverting, then, we might ask you with great confidence on this part of the testimony, separately, to believe in the existence of the same complaint, a few days before.

But we shall not stop even here, in making out the probabilities of a state of irresponsibility at the moment of the homicide.

We shall go into proof of the prisoner's origin and his early physical condition, to show that nothing was more probable than that he should ultimately become the subject of insanity, if any exciting cause should accidentally affect him. On this point we shall probably be able to show you, that he comes from a family in which the disease is hereditary. That a great-uncle and great-aunt, an aunt, and a brother, have all been deranged or idiotic ; that his father's whole family are a very nervous one, and subject to fits ; that Abner himself had violent fits till he was upwards of six years old ; that after the fits left him, he was always subject to convulsive turns in the night-time, and that those about him have known him to be affected by them, or some other cause, in a strange and inexplicable manner.

It is, gentlemen, you are well aware, a common subject of remark, that predisposing causes such as these alluded to, have an important bearing upon the question of insanity. The medical gentlemen will give you more light upon this subject, however, than I am able to. But in passing, permit me to quote a single observation from a recent writer, whose book has been already referred to. It is Dr. Taylor. He

says, page 629 of his treatise on Medical Jurisprudence, "insanity readily supervenes from very slight causes, where there is an hereditary taint." Esquirol has remarked that "this is the most common of all causes to which insanity can be referred. Other authorities have asserted that in more than one half of all cases of insanity, no other cause can be found for the malady."

Such, gentlemen, as we hope, will be the groundwork of probabilities, in matter of fact, in this case, upon which to build an opinion of the prisoner's responsibility or irresponsibility for the deed with which he is charged. But we shall not leave your self-distrustful or partially-informed judgments in this matter, without further and more competent advice, yet. We shall call to your aid, (as under the instructions of the court we have a right to,) those who will be ready to answer the scientific question, whether certain facts being proved to be true, a man is, or is not, insane: and whether if insane, the scientific probabilities are, that he was unconscious or irresponsible for his acts. For this purpose we have summoned here, as good counsel, we venture to say, as New England, or perhaps this country, can afford. Indeed, we do not know that the assertion would be eulogistic, to say that the old world cannot produce better. They are few in number; but as you are well aware from the fewness of lunatic asylums in our state or neighborhood, more cannot conveniently be had. But you will "weigh them," not "count them."

And since we have heard something from the other side, already, and shall probably hear more, by way of disparagement of such testimony, permit me to ask, how you can satisfy yourselves in a case like the present, either as conscientious or sensible men, without listening to such instruction, if the rules of law will permit you to have it? If the issue before you were, whether the prisoner had a typhus-fever, or some other subtle physical disease, instead of a disease of the

brain, would you be satisfied to dispense with the opinion of a physician, if you could obtain it? How much more, then, will you regard such information, in a case of the subtlest, and most intricate, and perhaps most varied disorder, that medical science has to treat?—a case where the ordinary practitioner is at fault; and where only a combined knowledge of physics and metaphysics—a combination of high mental powers with general scientific attainment, is at all adequate to constitute skill.

But even the magazine-article, quoted from the British and Foreign Medical Review, by the state's attorney, rightly understood, sustains this view of the use of medical testimony, rather than the other. The drift of that article, as we understand it, over and above a disparagement of the treatise of Mr. Winslow, upon which the gentleman himself has largely relied, is, that these questions of insanity should be tried in a different way from what they now are:—by something like a special commission, as in France, for instance; which, in reality, is submitting the whole matter to medical men.

But upon this head of the worth and value of medical testimony, permit me to quote an observation from a work of known authority, Paris and Fonblanque's Medical Jurisprudence. They say, pages 315–16, “the point has frequently given rise to discussion, whether the existence of insanity cannot be equally, or in some cases, more satisfactorily established, or disproved, by witnesses who are not of the medical profession? By persons, for instance, who have had opportunities of observing the individual, where the same advantages have not been in the power of the practitioner. To this we may reply, that the opinions of the generality of persons on the subject of insanity are extremely vague, and frequently very erroneous; and are commonly the result of those glaring exhibitions, those caricatures of disease which the stage represents, or romances propagate: the ordinary observer can hardly be

convinced of the existence of insanity, without some turbulent expression, extravagant gesture, or fantastic decoration ; while on the other hand he is too apt to infer a state of insanity from those whims and eccentric habits, between which, (and genuine aberration,) the medical practitioner from daily communication with deranged persons, can alone know how to discriminate."

There may be said, however, to be one practical test of insanity, not dependent upon medical testimony, which may be applied in this case, and which we do not scruple to accept as a criterion by which to judge of the prisoner's state of mind. And that is a test suggested by Dr. Ray in his last valuable report to the Maine legislature, on the state of the Maine Insane Hospital. I believe it is not original with him, but it has good sense in it, whoever is its author. The test is this: whether there can be noticed in the party supposed to be insane, "*a departure from his ordinary character and habits, without any adequate motives.*" (Fourth Annual Report, page 33.) We beg of you, at all events, to keep this principle in mind, in judging of the defendant's conduct, whether you make it the sole basis of your final decision or not.

But before I quit the point of opinion and tests of conduct, permit me to draw your attention to some observations on the subject of the distinction between real and feigned insanity: the ease or difficulty of seeming to be deranged, and the modes of discovering what is true, and what is pretended.

Almost all of the medical writers seem to regard the simulation of insanity, as very difficult, or easily susceptible of detection. Thus, Georget, a distinguished French writer, does not believe, "that a person who has not made the insane a subject of study, can simulate madness so as to deceive a physician well acquainted with the disease." (*Des Maladies Mentales*, page 60.) And Mr. Haslam, a standard English

authority, declares his opinion, "that to sustain a paroxysm of active insanity, would require a continuity of exertion beyond the power of a sane person." (*Medical Jurisprudence*, page 322.) So, Professor Conolly, another English writer of established repute, says in a late treatise on Insanity, (page 467,) "that he can hardly imagine a case which would be proof against an efficient system of observation." If these remarks are true of insanity, generally, much more are they so, we apprehend, of monomania in particular.

One of the very latest English writers on this subject, Dr. Pagan, whose book was published in 1840, and which contains many valuable additions to the former treatises in our language, has some striking observations, to this very point.

"Monomania," he says, "may be concealed; but it would be excessively difficult to feign it successfully. So far as I am aware, this has but rarely been attempted; and if such attempts were made, they would almost certainly fail. It is no doubt easy enough to affect peculiar opinions and causeless enmities; but it would be exceedingly difficult to follow out the delusions of monomania to their full extent. It would be a wonderful intellectual effort, indeed, for a person of sound mind to imitate that peculiar reasoning which arises out of, and centres in the fixed idea of partial insanity, without betraying the effort which it costs him: he would either over-act or fall short of the fact. No man, however well acquainted with the phenomena of the disease, could successfully feign that obstinacy of belief in the grossest error against the clearest argument, without showing that it was assumed for the purpose of deception; while no practice would enable him to imitate that aspect and expression which are so characteristic of this form of insanity. It would require more art than most men possess, to feign those instinctive impulses which lead to criminal acts, which I have already described, and which are believed to exist independently of

intellectual aberration. *It would be impossible, I believe, to feign successfully the extraordinary agitation, anxiety, and anguish, which, for the most part, precede the criminal act, to the commission of which they are irresistibly impelled.*" (Medical Jurisprudence of Insanity, pages 199, 200.)

So, Dr. Taylor, in a chapter of his very recent work, on Medical Jurisprudence, specially devoted to this head of feigned insanity, has some remarks on the tests of real or feigned insanity, which I deem too valuable to omit. He says, (page 630,) "*it is necessary to remember, that insanity is never assumed until after the commission of a crime, and the actual detection of the criminal. No one feigns insanity merely to avoid suspicion. In general, as in most cases of imposture, the part is overacted—the person does too much, or too little, and betrays himself by inconsistencies of conduct and language, never met with in real cases of insanity. We should observe whether there has been any marked change of character in the individual, or whether his conduct, when he had no interest to feign, was such as it is now observed to be. In real insanity, the person will not admit that he is insane;—in the feigned state, all his attempts are directed to make you believe that he is mad; if told that he is insane, he does not contradict you. The feigning of monomania, would be a matter of some difficulty, and easily susceptible of detection.*"

Thus far, then, gentlemen, of the facts and probabilities, to show that this is a real, and no fictitious case of insanity. But, one other important element yet, remains to be considered, which, though adduced against us, is to our view, almost proof positive, of the genuineness of the defendant's disorder. And that is the fact contended for by the prosecution, *that he is now sane.* Whether he be so or not, we shall not undertake to say. His disease may for a time have subsided;

it may still be upon him, and concealed with an insane man's cunning, or with an honest disbelief on his part, of its existence. But if it have actually left him, then why, if he is a pretender, has it left him in his season of greatest peril and need? Why was it not continued till, at least, the occasion of the first trial had passed? Why has it not recurred in the interval, between that and this, to help out, in some measure, his former contrivance and counterfeiting, if contrivance and counterfeiting it were?

But we can hardly bring ourselves to doubt, on the question of simulated, or actual insanity, generally, that you will believe the defendant's mind was really affected with some deranging cause. Whether it was such a derangement as will exonerate him from responsibility in law, remains yet to be considered. What principles of law, then, apply to his plea of insanity?

In the first place, it is undoubtedly true, as contended for by the state's attorney, that if he were insane at the time of the homicide, it is for him to show it. The law supposes, rightfully, every man to act with a sound understanding, until he can make proof of the contrary.

But how much proof is necessary to establish the contrary of mental soundness? Slight circumstances, certainly, will raise a suspicion of a man's intellect being affected, and not much stronger additional facts, will convince us *to our own satisfaction*, that his mind is *not* sound. This is all that is required, to overcome the presumption in question, and to sustain the burden of proof affirmatively. Once satisfied, that a man had not the use of right reason, at the moment of doing an act, and you are to exempt him from criminal responsibility. It is not true that this negative proposition must be made out for him, *beyond a doubt*, as is sometimes stated. The nature of the case, does not permit the certainty of positive demonstration. You cannot show that a man is insane,

beyond a doubt. But when you have once turned the scale of probabilities, then, there are all degrees of making sure the fact in question ; and as in any other matter of proof, no greater amount of evidence is to be required, *than is satisfactory under the circumstances*, so in this matter of insanity, you are not to insist upon a greater strength of proof, than the nature of the case will permit. We do not say that if we make out a doubtful case of insanity here, it is sufficient ; but it is enough, we contend, if we show a *probable one* ; a *satisfactorily probable one*. The language of the law, we think, bears out this statement. Thus, as uttered by Lord Kenyon, in *Hadfield's case*, (already cited) : “ Insanity must be made out to the satisfaction of a moral man, meeting the case with fortitude of mind, and knowing the anxious duty he has to discharge ; yet if the scales hang tremulously, throw in a certain proportion of mercy in favor of the prisoner,”¹ stronger, if anything, than we have ventured to state it.

Then, if our proofs shall satisfactorily establish the existence of insanity in some degree, what insanity must it be, to exculpate from responsibility ?

On this point, supposing that the law, as enunciated by the court, on the former trial, will be the guide of the present decision, we do not propose to go into its discussion at large. We understand the governing principle of this case, as stated by his Honor, the Chief Justice, on the former occasion, to be — (as we have it upon our notes,) — “ that partial insanity, or monomania, exempts from responsibility, when arising from a belief of some facts not true in themselves, which if true, would justify the act, as in self-defence ; or where one believes he is commanded by the voice of God, or some superior power, to do the act ; or where the mind of the party is in a diseased state, known to expose to acts of uncontrollable violence, so that although there was no previous indication of

¹ 27 Howell, St. Tr. page 1354.

violence, the subsequent act connecting itself with the previous symptoms, is an indication to an experienced mind, that the outbreak was of such a character, as for the time being, to overbear the conscience and reason."

So far as regards the present case, we do not know that we need ask any reconsideration of this statement, in any particular ; though as it respects the abstract proposition in the first category, requiring the existence of a state of facts, such as would justify a sane man, in the same kind of act, we believe the proposition would nearer accord with the opinions of the medico-scientific, if coupled with the last proposition, than if left standing by itself, as it now is. Thus, cases like *Sclafer's*, (cited from Marc,) and *Hadfield's*, and *McNaughton's*, even, were not based on a state of facts which would have justified sane men in committing their acts ; and yet, on the other ground of morbid impulse, they were undoubtedly irresponsible for them. The prisoner's case, however, we believe, might safely be rested on the ground of supposed self-defence ; since, if the facts are established as we state them, they will show a fear for life, and a probable apprehension of immediate danger, which would have well warranted a taking of life, in self-preservation.

The state's attorney, however, does not see fit to abide by this statement of the law, and has insisted that the late opinion of the English judges, to the House of Lords, contains the principles applicable to this case. Why the law of England, having an authority among us only by way of analogy, should be paramount to the law of Massachusetts, I am unable to perceive. No doubt, the prosecuting officer finds in its short, and elliptical, and old-fashioned propositions, something better to his purpose, than in the broader, more comprehensive, and more scientific opinion of this court ; but this same opinion was before their Honors at the last hearing, and is of course no more law now, than it was then.

B sides, to make a criticism or two upon the legal merits of this opinion, which, in the outset, as has already been observed, only purports to be predicated upon the merest abstract points of inquiry, it is a little remarkable, that if it settles anything, it unsettles the only well-established principles of law, relating to insanity, which have been recognized the last half century in English jurisprudence. I mean the law of *Hadfield's case*. A case, which I had supposed, if any, was agreed on all hands to have been rightfully decided, and which, so far as I am aware, in all the recent discussions of the subject, has not been questioned in any particular. That case most distinctly involves among its leading features, the two elements of, "the accused knowing he was acting contrary to law, but doing the act complained of, with a view, under the influence of insane delusion, of producing some supposed public benefit;" and again, "of acting under a belief of a state of facts, which, if real, would not have justified the same conduct in a sane man." The reported facts show, unequivocally, that Hadfield's very words, at the time of his arrest, were, "that he knew his life was forfeited;" "that he was tired of it, and only sorry for the fate of his wife;" and that his delusion consisted in the idea of sacrificing himself for the good of mankind. Whether this would have been a moral and religious justification of the same conduct, in a sane man, it is not necessary to say; but that it would have been no *legal* justification, is, I think, very clearly settled. That it shows a knowledge of legal consequences, and a willingness to incur them for a supposed public good, is, also, too plain to need repeating.

McNaughton's case, further, which all the reviewers, as well as the debaters in the House of Lords, have not pretended to question — (at least so far as C. J. Tindal's course is concerned, who virtually stopped the prosecution,) — is fundamentally overthrown by the same opinion. There, was

a taking of life to get rid of persecution : — not, as it would seem, a persecution of a dangerous or alarming character, but only injurious to the peace and quiet of mind of the unfortunate sufferer. The whole *gist* of that case, so far as the point of jurisprudence is concerned, is contained in the prisoner's own explanation of the matter to Dr. Monroe ; namely, that he believed Drummond to be one of the crew leagued against him, and that when he fired at him, all the sufferings he had felt for months and years came up into his mind, and he thought he *should obtain peace* by destroying him. So, Martin's destruction of York Minster was designed for the public good, and could not have been justified by any principle of self-defence. So, Oxford, in all probability, acted with a view of benefiting the kingdom, or "of avenging some supposed grievance or injury," in shooting at Queen Victoria.

But cases like the two latter, are not, perhaps, so much to be insisted upon, for the reason that they passed under the verdict of the jury. But in regard to the former, the interference of the judges plainly amounts to a ruling of the law upon the whole facts, and is therefore, we conceive, an authority throughout.

But, farther : this opinion in the House of Lords, if participated in by Lord Denman and the two other judges, (Alderson and Patterson,) who tried Oxford, varies materially from the law as announced by them on the occasion of that trial : a statement of law, which we believe to be the most satisfactory and scientific, so far as it goes, that can be found in English jurisprudence. Says Lord Denman in that case, (reported 9 C. & P. 525, 546,) "if some controlling disease was, in truth, the acting power within him," (the defendant,) "which he could not resist, then he will not be responsible." And again, (page 547,) "the question is, whether the prisoner was laboring under that species of insanity, which satisfies you that he was quite unaware of the nature, character,

and consequences of the act he was committing ; or, in other words, whether he was under the influence of a diseased mind, and was really unconscious at the time he was committing the act, that it was a crime."

This declaration of the law quite accords with the opinion of this court already expressed. It is the same also, in substance, as that stated by Dr. Taylor, as, in his view, the most scientific and practical test for a jury to apply, namely : "*whether the individual at the time of the commission of the crime, had or had not, a sufficient power of control to govern his actions.*" Taylor, 650. And we submit that it is the better exponent of English law upon the matter.

Without then troubling the court with the points made, and the authorities cited, upon the former trial,¹ I proceed to

¹ For the sake of reference they are here given. 1st. *If the test of "capacity to distinguish right from wrong," is to be adopted here, as the measure of the prisoner's responsibility, then it is not to be extended beyond his power of judging as to the act itself: it does not apply to conduct generally. Hadfield's case, 27 Howell, Stat. Tr. 1282. Roscoe, Crim. Er. 778. Alison, Crim. Law, 645. Lord Lyndhurst, in Offord's case, 5 C. & P. 168. C. J. Tindall, in McNaughton's case.*

2d. *The capacity to distinguish right from wrong as to the particular act, means an ability to view it in its natural and true relations, as it usually appears to men of sound mind. Lord Denman, in Oxford's case, (9 C. & P. 546-7 ;) Roscoe, Cr. Ev. 781. Mr. Erskine, in Hadfield's case, 27 Howell, State Tr. 1317. Hume's Com. 1, 24-5. Alison's Com. 645. Seventh Report of the English Crim. Law Commissioners, pages 18-19. McNaughton's case.*

This capacity to distinguish, (as above,) does not exist, where a delusive or diseased impulse hurries one away at the moment of action, so that no time is afforded for deliberation, though the mind could discriminate correctly, if such time were afforded. In other words: morbid irresistible impulse, though accompanied with consciousness, is as adequate an exemption, as total unconsciousness.

3d. We contend for the application of the test of Mr. Erskine, in *Hadfield's case*, of "*delusion coupled with the act.*"

notice one or two other points of law which present themselves in the case.

And first, as to the point of the state's attorney, that the prisoner's offence, if not amounting to murder, may yet constitute manslaughter. That, as manslaughter is murder upon provocation or under sudden excitement, so murder under an insane or partially controllable impulse, may be no more than manslaughter.

We admit the ingenuity of the argument: but to say that the provocation of an insane impulse is equivalent to the provocation of the law of manslaughter, seems very much of a piece, to our thinking, with the reasoning, by which Lord Coke extends the penalties of burglary to the offence of breaking into a church, namely, that as the law applies only to breaking into a dwelling-house, it applies to breaking into a church, because it is *the Lord's dwelling-house* — quoting for his authority, the passage of scripture, “it is written, my house shall be called a house of prayer, but ye have made it a den of thieves.”

More seriously, however, we believe the proposition is an entire novelty in English law; and in American, also, with some exceptions which we have been able to discover, where the point was made, but overruled by the court. The point seems to have been suggested in *McDonnough's case*, tried before this court in 1817, (reported in a pamphlet form by Mr. Knapp, one of the counsel in the case,) but was summarily disposed of by the bench. The very point however was raised, and received deliberate attention, in a case in New Hampshire, before the supreme court.¹ I refer to the case of *Daniel H. Corey*, indicted in 1830, for the murder of Mrs.

¹ Also reported in pamphlet shape; but by so good an authority, the present chief justice of that state, that I presume I may safely allude to it as entitled to credit.

Nash. The decision there, was, that insanity, shown to exist at the time of an homicidal act, cannot change the offence of murder into manslaughter. Say the court, (to quote two lines of their opinion,) "if the prisoner had his reason at the time, the crime was murder; if he had not, he could commit no crime." Page 73. This argument of the court is our own on the present occasion; and we have nothing more to add.

As we propose to call some pardoned convicts as witnesses in this case, we shall either ask the instruction of the court that they are restored to their credibility, (at least so far as this is not necessarily detracted from, by the circumstance of their coming from a place of confinement,) or for leave to support their word by proof of capacity for truth and general good character. *Perkins v. Stevens*, 24 Pick. 277. *People v. Pease*, 3 John. Cas. 333.

I have thus, gentlemen of the jury, imperfectly, though I fear with some trial of your patience, endeavored to lay before you the merits of the prisoner's case. You are now in possession of his story. You will presently proceed to hear the testimony of the witnesses in support of it, and the argument of my associate: and when these brief, — to the prisoner, very brief, — proceedings are closed, you will have to decide the momentous issue of his life or death. What responsibilities belong to the occasion! If the state's attorney has felt himself called upon to allude to them, and to invoke their solemnities to inspire you with firmness to execute the mandates of stern justice, with equal propriety, may I remind you of them, to bid you be open to the dictates of mercy and humanity. This is indeed an office of the highest importance which you now sustain! For the time being you are the highest power in the state. That power, which our constitution lodges in no man's hands, nor, permanently, in any body of men's hands — of taking life — is on this occasion vested in you. To-day, and for the time being, the course of our institutions

makes you dictators in the state. This defendant is drawn before you in the bonds of the law, and your word sets him free or sends him to the scaffold. The czar of Russia has no more absolute power over the meanest of his subjects, than you have at this time over your fellow-citizen, there, at the bar.

But consider, gentlemen, your responsibility to the community you represent, to your own selves, and to Divine Power, before whom you stand ; as well as to this helpless defendant, upon the present occasion.

If you represent the state, you represent all its wisdom, and impartiality, and mercy. A great statesman of the mother-country, Mr. Burke, has said, that the soul of government lies in the jury-box : and that to secure its impartiality, all legislation, and executive administration, and the course of government go on. Upon you, then, the community has reposed its best attributes. And it is here in the metropolis of New England, in the nineteenth century, with the best lights of American civilization and progress about you, that you undertake to judge this defendant capitally. See that you make no mistake of truth and correct judgment, and still more no mistake — lamentable mistake — of justice and impartiality. If you err or wilfully misjudge, you, and the whole community through you, are guilty of no less than social murder.

But if human relations involve responsibilities thus great, how much greater are those which you, which all of us taking part in these proceedings, sustain before the sight of Almighty Power ! — To deprive one of our fellow-beings and brothers of the human race, of his life — that which we never gave, that wherein perchance we invade the prerogatives of Omniscience in assuming to take away — is the object, or may be the result, of our convening here. Slaughter in battle, or chance affrays, may perhaps be excused by temporary heat. But here,

with deliberate, and (if they be wrong,) with awful solemnity, the community enter upon the work of blood. I do not mean to argue the question of capital punishment now. Sufficient for me, in my present position, that the law stands as it is. But I cannot but call to your notice, that there is a higher law, and bid you, — by its solemn realities, — by its certain judgment hereafter, — be careful that you administer this human law with all possible perfection of justice, and with all consciousness of the responsibility which you draw down upon the community and yourselves. Gentlemen, we act, all of us, now, in the open, immediate presence of Omniscience. A thin veil only separates the unseen from the seen ; and while I speak, and you listen and resolve, a judgment is going on of our thoughts, and feelings, and motives. Heaven grant we may not err in our respective duties upon this occasion !

But, gentlemen, if you sustain a responsibility to the community and to your own selves, at this time, you do so, no less, towards the unhappy prisoner at the bar. With what feelings, think you, does he regard your panel ? With all possible trust and confidence, I believe, as the judges whom he has been permitted to select from the list afforded him by the government ; but still, as the arbiters of too solemn interests, to behold with any other than feelings of the most watchful and anxious solicitude. The stake is too dear for him to put confidence in any man. His all, this side of the grave, is in your keeping. And if he has been a convict heretofore, if he has even twice broken the laws and merited punishment — (though we believe him still, a far better man than his punishments imply, or than he has been represented by the prosecuting officer) — yet the privilege of life is as dear to him, and the pains of death as dreadful, as to any of us. And will his former ignominy at all diminish the bitterness of suffering unmeritedly upon the fatal scaffold ? If he has any of the elements of a man left in him, and his name and

good fame have already suffered so deeply, will it not be all the more aggravating, to have the last stigma of opprobrium fixed unjustly upon him, and all opportunity of retrieving the past, cut off? — to perish, and leave no other memorial among men, than that of, *Rogers, the Murderer*? And, do you believe that he is lost to feelings of family honor and social regard, and has no sense of shame left for the sorrow and mortification of an aged father, and mother, and a large band of brothers and sisters? No! Gentlemen. His heart cannot yet be dead to these promptings of nature; and you will, yourselves, remember, that the innocent, and perhaps highly-worthy, though humbly-poor relations of this prisoner, are to suffer with him and share in your verdict.

More than all, gentlemen, the prisoner before you, your fellow-citizen by the laws, your brother of the human family by God's creation, is a spiritual and immortal being. He has a soul to save, a probation to perform to his Maker. And if the past portion of his days has been abused, how dear, how infinitely precious the remnant of his days to atone for past offences and restore himself to the forgiveness of his God? What earthly language can express the equivalent to him, for an opportunity to repent and reform? May you remember these his necessities, as you will wish your own to be remembered hereafter. And when your own day of trial shall come, may your part in these proceedings — perhaps the most solemn act of your lives — help entitle you to the benediction, "blessed are the merciful, for they shall obtain mercy."

Mr. BEMIS having concluded his opening remarks, at half past eleven, A. M. proceeded to call the witnesses for the defence.

David Sargent, called and sworn. I am a turnkey in the state-prison, and was such in June last. I have charge of the shoe and tailor's shop in which Rogers worked; have known

the prisoner since May last. His general conduct was as good as any other man's in the shop, until three or four days before the homicide. I noticed nothing unusual in his conduct, of importance, till the Thursday or Friday preceding the 15th June. He had always had the privilege of walking for exercise in the yard, ten minutes, forenoon and afternoon. On one or the other of the days named, he went out, and was gone, perhaps, fifteen minutes. He came in and told me that Mr. Braman had said he should see the warden, and put a stop to his walking out so. I told him that I should allow him to walk out until I had orders from some higher authority to the contrary. Mr. Payne, the deputy-warden, came in afterwards, and I spoke to him about the matter. He said Rogers might walk out as he had done, except when the work was pressing. Mr. Lincoln came in and asked if I allowed Rogers to walk out, and forbade it. I told him I thought he ought to be allowed the privilege, as he complied with the regulations of the shop, as well as any other man. He said Rogers was indolent, and did it to get rid of work. I told Rogers what Mr. Lincoln had said, and he replied, "I don't care much about it, I have got so little time to stay;" and went to his work cheerfully.

Sunday night, Rogers made some noise in his cell, as I learned, and Monday evening was left out and ordered into *solitary*. I told the warden at this time that I thought the man was not in his right mind; — this, however, from what I had heard through the other officers.

Tuesday morning, Rogers came into the shop as usual, and once or twice, perhaps, three or four times, came up to me and told me "that the officers were coming some kind of a game over him." He called it the *checkerberry* game. I merely laughed at it, and told him that it was all his imagination; that if he complied with the rules and regulations he would not be punished. He told me that they were coming

a *popo* game over him, and that he should not live twenty-four hours ; that the warden was going to shut him up, and he should not go out till he went out feet first ; that they had put checkerberry in his food ; and he had heard the men say, over his head, that he must hold his head down and sweat it off. He told me he had done so. He said Sam Robinson and Cole had told him this, in the division over his head. He did not say at this time *where* he was to be shut up.

Wednesday morning, Rogers came into the shop without hat or shoes. He said that they were going to take him off to punish him. Mr. Fogg came in soon after, and a scuffle took place between them. When Rogers came in, he appeared excited as if he had been running. He came to me repeatedly during the day, and spoke of this game they were playing on him ; that he should not live twenty-four hours ; that something was the matter with his head. His complaints were nearly the same as the day before, about the checkerberry, and his fears. I laughed at it. He spoke repeatedly of hearing these voices, telling him these things — that he would not go out till he went out feet first, &c. His appearance, during this, was downcast and fearful. He appeared very sincere and not as if he were in joke in what he said. He went about his work during the day as if he were in a deep study and did not appear inclined to talk to any one. I can't say that I saw him in tears.

On Wednesday night, as he went out of the shop, I told him to mind and make no more noise in his cell, and he would have no more punishment ; and he said he would. On that night I was on guard, in the guard-room, and about twelve o'clock the bell from the new prison rang. I went down and asked the officer what was the matter, and he said Rogers was making such a noise the men could not sleep. I waited a little while and heard no noise, and then went up and told Mr. Payne what was the difficulty ; and he said, let him be as he is.

Thursday, Rogers seemed agitated, and told the story of what he had heard from Cole and Robinson ; that the warden was going to shut him up, and that he was not to go out till he went out feet first. He did not keep at work regularly in the shop, but would stop and hold his head down, and seemed in a study. The warden came in that morning, and I told him I thought Rogers was insane, and not in his right mind. He told me it would'nt do to talk in that way ; if I did, I should have every man insane in the yard. He intimated that it was done to get rid of work ; that he knew him better than I did. I thought, as I had been there but a short time, I might be mistaken. Rogers came to me the same morning, and asked to go to the Doctor ; and I permitted him, and gave him the pass-book. He took the book and went up, and an order came back for him "*to keep at work.*" He told me he couldn't sleep much on account of the talk over his head. Thursday noon he was showered. In the afternoon he did but very little, and appeared to be distressed, and under intense anxiety about being shut up, and this game which was to kill him. He seemed under *very great* excitement. He came to me soon after he came in, and said he was not able to work, his head felt very bad. I told him if that was the case, he might favor himself, and rest when he couldn't work. I noticed him several times in the course of the afternoon, and he seemed to be a good deal agitated. In one instance, I saw him sitting with his hands clasped, and his head thrown back, as if in great agony ; and I spoke to Savary, one of the convicts, who has his place by me overlooking the shop, to observe his conduct. I went down to the end of the shop by him, and he said to me, "Mr. Sargent, that story you reported of me, about breaking open that store in Lynn, is false." I asked him what he meant by it. I merely laughed at him ; saw how it was, and thought best not to say much to him. This was between three and four o'clock, I should

judge. Between four and five, he came to me to go and see the warden, to see if I could'nt get him released from punishment. He did'nt say *what* punishment. I gave him to understand that there was no punishment hanging over him at that time. He asked me again to go and see the warden. I told him it was of no use, for he was gone away. Mr. Crowninshield, (the contractor of the shop,) came in. He had'nt been in more than twenty or thirty minutes, and was speaking to me, when Rogers came up to the raised platform where we were standing, and knelt down before Mr. Crowninshield. He appeared to be in great anxiety and agony. His voice trembled, and his hands were clasped. He told Mr. Crowninshield to go and see the warden in his behalf. Mr. C. replied, that if he did'nt go to his work, he would'nt do anything for him about it. After a few words more, Rogers went back to his work. About fifteen minutes after this, I should think, Mr. Lincoln came in. I told Mr. Payne, that afternoon, before Mr. Crowninshield came in, that I thought the man was insane, and ought not to be there.

Mr. Lincoln came in with Mr. Jaquith, from the blacksmith's shop, and passed along at my left to the bench, where Thorn was at work. While they were there, I was turning to speak to Savary, and on turning back, I saw Rogers approaching Mr. Lincoln, then within two feet of him, with his hand raised, and a knife in it. He struck him in the back; and when Mr. Lincoln made a motion to raise his cane, repeated the blow in the neck. By the time I had got to Mr. Lincoln, he turned, and fell into my arms. I called on the convicts to help me, and said, "Rogers has murdered the warden." I did'nt observe Rogers's eye; can't say how he appeared in that respect. I did'nt hear any words spoken at the time the blow was given. Mr. Jaquith stood beyond Lauber, a convict, and Mr. Lincoln was this side of Lauber, and between him and Thorn. I did'nt notice par-

ticularly what Mr. Jaquith did ; don't recollect his taking any part.

During the six weeks I had charge of the shoe-shop previous to the homicide, Rogers was particularly under my keeping, and no officer saw so much of him as I did. His statements to me about the voices, and the intentions of the officers, and his fears, were always the same. He always spoke of hearing voices. Savary is the overseer of the shop under me, to superintend the giving out the work. He was selected for his good conduct, and as a mark of favor.

Cross-examined. I went to the prison the first of May last : but I had been acquainted with the prison, more or less, for eight or ten years, having occasion to visit it as an agent for a contractor. I had not put any mark against Rogers's name in the hospital-book, when I sent him up with it ; don't recollect when he returned to the shop ; think he didn't inquire about the prescription ; don't recollect communicating what it was, to him, though it is my general practice to do so to the convicts. He spoke of hearing the voices in *the night*, from the first, I believe. It was the middle of Thursday afternoon, that he requested leave to see the warden. Rogers was not once out of the shop that afternoon. *The warden was away, that afternoon, and didn't come through the shop as usual.* I don't know that I ever heard Rogers speak harshly of the warden. I never could understand what he meant by the *popo* or *checkerberry* game ; never heard such terms before : Cole and Robinson's cells are so far off from the one occupied by Rogers, when "in solitary," that he couldn't have heard their voices without their also being heard by the officer on duty.

James M. Gardiner, called and sworn. I am a watchman at the prison ; was such the 15th of June last ; know the defendant, and have known him these three years.

Monday night, the 12th of June, I was on duty in the new

prison, the latter part of the night, from twelve o'clock till morning. At twelve o'clock, I took my lantern and examined all the cells, and saw that the men were all in their places. Rogers that night was in his own cell. About two o'clock I heard an unusual noise, like the voice of a person in distress. I lit my lantern as soon as I could, and endeavored to trace it. The noise was very loud ; but from the construction of the prison, it was hard to tell from what cell it came. The cry was a kind of groan. "Oh dear," "oh dear me," "I shall die !" "I shall die !" I went, first, up to the sixth division of cells, (the third range,) then descended to the fourth, (the second range,) on the same side, and then to the second, (the ground floor.) There I found it to come from Rogers's cell. I put my lantern up to the grated door, throwing the light full on Rogers's person, and saw him standing up, with his hands crossed, and a-trembling. His bed was turned up, and he was standing in his drawers. I spoke to him, and asked him why he was making such a noise. Says he, "oh, Mr. Gardiner, I am going to die, I am going to die." I told him he mustn't make so much noise, he was disturbing the whole prison. He said he couldn't help it: he had heard Cole and Sam Robinson say, that the warden was going to keep him in solitary the rest of his time ; and if he did so, he knew he shouldn't live. I ordered him to go to bed and be still, or I should report him in the morning. He went back into his cell, saying, "oh, Mr. Gardiner, if I had taken my father's advice !" "I shall die, and I am not fit to die." I told him he was dreaming ; to lay still and he would get over it. He said, among other things, he shouldn't go out till he went out feet first. When I first went to him, he talked and ran on so, that I couldn't stop him at all. I finally got him still, and left him.

I didn't hear any more from him till just towards morning. He made a little more noise, then, just before four o'clock,

when the bell rang to call the convicts to their work. I felt fully convinced at the time, that the man had waked up out of a frightful dream ; and I wrote on the book, "all's well," the same as usual.

In the morning, being on duty near the shoe-shop, I sent for Rogers to come out. He came to me, and I asked him how he felt ; if he had got over his dreams. He replied, "I feel better, but I can't make myself believe but that the warden is going to shut me up, and that I shall die. I'm sure I heard Sam Robinson and Cole talking about it." I sent him into the shop again. The same morning I spoke of Rogers being frightened, when I was up at the guard-room, but didn't mean to report him. Mr. Payne was present and took it for a report, and had him "left out," that night. When the warden called him to him at the foot of the stairs, I went up to the warden and told him I didn't think Rogers knew what kind of a noise he was making last night. After he was sent into "solitary," I told him I was convinced that he had waked up out of a dream. "Poh !" says he, "you don't know him as well as I do." I was so convinced that he didn't deserve punishment, that I spoke to him again upon the subject. Says he, "you will find him out when you have known him as long as I have."

Thursday noon, I was on duty on the platform, to see the men turn out after their dinner. Rogers didn't step out with his division. I went to his cell and found him on his bed. He had his jacket off and shoes. I spoke to him, "what are you doing now ? — get up and go to work." I spoke to him twice, before he started. He got up and put his shoes on and came out. I told him to go to work : and he set out to follow me into the barber's shop, (which I was about entering,) instead of going to his own shop. But I looked round and he went the other way. His eye had a ferocious expression at this time ; different from what it appeared Monday night

Then, he seemed more alarmed. He was very pale at this time.

After the homicide, when the prisoners were locked up, I had orders from the deputy-warden to take Rogers up to the old prison. This was perhaps twenty minutes after six. I unlocked the cell, and told him to come out, and he instantly obeyed. He seemed willing to talk, and began to say something, but I checked him. I took hold of his arm. Says he, "I can go along well enough by myself." Says I, "I think it is best to hold on to such a fellow as you are." I put him into the cell, having first gone in and searched the cell, and taken out everything that he could hurt himself with. On Friday night, being on duty in the guard-room, about two o'clock I heard a great noise in his cell, like what I had heard before in the new prison. He was crying out, "oh dear, oh dear me!" &c. Saturday night, I was at the same place, and heard the same noise, but not so much of it I think. Sometimes I heard him taking on in the day-time; say, during Friday, Saturday, and perhaps Sunday; but not after Monday. I knew it was Rogers by the voice. One morning, either Friday or Saturday, I should think, Rogers asked me what he had done. I told him that he knew what he had done: he had murdered the warden. He said, "how dreadful!" and spoke of the loss to the children who no longer had a father, and made some remarks about his own father. He asked, one morning, something in relation to what he had done, and said if the warden had let him go six months before, this would have never happened. One morning, (I think it was the same,) he spoke of Sam Robinson and Cole, and the voices, and ran on in much the same strain as before. He spoke of the poco-game, Sunday-morning, when Mr. Dwight was there.

Rogers's own cell was in the division or story below Cole and Robinson's, and distant nine cells one way from Cole's,

and eleven cells the other way from Robinson's — full thirty-five feet, I should think, from the nearest. No conversation could have reached him from either of their cells without being overheard by the guard. The cell occupied by Rogers when in "solitary," was on the other side of the prison ; and I should judge that all communication would be impossible. Rogers appeared sane after his father came, Monday. The night of the homicide, when I was leading him up to the old prison from the new, he appeared calm ; calmer and different from what he had at noon. Rogers spoke with regret, more than once, of the injury he had done Mr. Lincoln's family, and of the disgrace he had brought upon his own. He said he was a young man, and had ruined himself, and must die. Sometimes he had his usual demeanor, and again, talked wildly.

Cross-examined. I should think that it was Saturday morning that he said, if the warden had let him go six months before, he would have been alive, then. I am not certain that he mentioned Cole and Robinson's names till after the homicide ; but he ran on in general as he had before the homicide. Robinson and Cole worked at the same forge in the blacksmith's shop, and Rogers used frequently to go there to heat his pressing-iron. I never knew him, however, to speak to them : if I had, I should have reported him. There was always an officer in the shop to watch the convicts. I have seen him while his iron was heating, go to the shop-door and look up towards the house — (the guard-room) ; can't say what was his purpose : but then he was not near Cole and Robinson. I shouldn't think he could have had opportunities to converse with them in the washroom ; nor do they sit beside him in the chapel. When I took him out of the cell, Thursday noon, he looked ferocious, as I have said before. He had just been showered, for his hair was still wet.

Abraham W. Crowninshield, called and sworn. I am a

cabinet-maker ; am contractor in the cabinet and upholstery department of the prison ; have been connected with the prison as agent and contractor for twelve years. I know the defendant, Rogers ; have known him these five years, and have seen him every day that I have been at the prison.

The first that I noticed anything unusual about the prisoner's conduct, was on Wednesday, the 14th. On the morning of that day, he came to me and wished I should intercede for him with the warden, to save him from punishment. He said he was going to be punished, and if he were, he should die ; or it would kill him : I think he spoke of *the warden's* punishing him. I told him there was no danger of his being punished, unless he had done something worthy of it, and I would see the warden about it. I saw the warden not long after, and told him what Rogers had said to me, and that he didn't appear to be right ; there was something the matter with him. The warden told me that he thought he was only *shamming it*. The next day he came to me, in the fore part of the day, and thanked me for interceding with the warden for him. He told me that he had not been punished, that he had got some sleep, and that his head felt better, though it felt bad, then. I told him if he kept quiet he would have no more trouble.

I saw him again the afternoon of the same day, between four and five o'clock. I was then standing at the desk, talking with Mr. Sargent. Rogers came up to me and kneeled down on the platform, and appeared in distress. He told me that the warden was going to shut him up, and if he did, he should die ; it would kill him. I told him to go to his work, but he kept on begging and entreating, and appeared to be in great distress, and shed tears. I then told him if he didn't desist, I wouldn't go to the warden for him. He said he would go to his work, and do the best he could. I saw no more of him till after the homicide. I told Mr. Sargent at

this time that it was not right that the man should be kept in the shop ; he ought to be taken out ; and I would go up and see the warden about it. I accordingly went up to his room and found him out. I saw Mr. Payne there, and told him Rogers was making quite a noise and disturbance in the shop, and ought to be seen to, immediately. Mr. Payne said he would attend to it.

Rogers's manner, appearance, and deportment on these occasions were altogether different from usual. He appeared uneasy, disturbed and not inclined to work ; and, I should say, *diseased*. He complained of a pain in his head. He seemed to be in fear of punishment, and thought if he were punished it would kill him. I did not observe any manifestation of resentment towards the warden.

After Rogers returned from receiving his second sentence, I recollect asking him if Mr. Lincoln had spoken in his favor. He said he had — all that he could ; he had spoken *well* for him. I told him he had got off with a light sentence, and now he must try and do the best he could while he remained. He said he should.

Rogers's general behavior was good, so far as I had anything to do with him : better than the average of the convicts. I didn't observe any appearance of feigning about him. His distress seemed real.

I saw the defendant the next week after the homicide, in company with Doctor Bell and Mr. Fogg. He said he was glad to see me, and asked me if I thought he could have been in his right mind when he killed the warden. He said, " they say I have done it, and I suppose I have." I told him I should be sorry to believe that any man in his right mind, could have done such a deed. I asked him if he would have killed *me*, if I had taken hold of him at the time of the homicide. He replied that he didn't know what he should have done. Mr. Fogg asked him if he should have

killed *him*, if he had done the same, and he said he thought he should, if he had had a knife. I didn't then know that he had had a scuffle with Fogg, or been punished.

I was present when the defendant was brought out to see the corpse, Sunday noon. Mr. Payne asked him if he knew who it was. He said it was the warden, and seemed to be agitated. His hands were clasped and raised up, and I thought he was in prayer. He was muttering over something.

Cross-examined. Rogers was hand-cuffed when he went up to the coffin; he could, however, raise both his hands together. I did not inquire of him, what he expected to be punished for. We have as little conversation as possible with convicts. We contract for their labor by the day. Rogers had worked for us nearly five years, was generally a good workman. I do not know that anything was allowed for his loss of time. He worked very well. I don't recollect hearing any complaints about his work. He was generally docile and kind. His tools were two or three long sewing-needles, one, a foot long, a quarter of an inch thick, of steel, and sharp, and which might be used for a weapon. He commonly had two or three knives; generally short, but sharp ones. He had occasion to go to the blacksmith's shop to heat his pressing-iron, which is something similar to a tailor's goose. The tools were left on the table and bench at night. He was at work upon a mattress Thursday afternoon, and came up to me almost as soon as I entered the shop. Mr. Baylies Braman was my foreman. I heard Mr. Eddy, (one of the officers) speak to Rogers at the coffin, Sunday. He looked up at Rogers and said, "there's the warden, and there's the hand," (pointing at his,) "that killed him." Rogers made no reply that I heard.

(*In answer to a question from a juror.*) I regarded the defendant as possessing ordinary intelligence up to the short time before this act. I paid the same price for him, as for others.

George H. Savary, called and sworn. (This witness, it was agreed, had received a pardon, to enable him to testify on behalf of the prisoner.) I reside in Randolph, and am a shoemaker by trade. I was a convict in the prison in June last; have known the defendant five years. When in prison, I was overseer of the shoe-shop, so far as to cut out the men's work, and see to its completion, and to its being entered on the book. My place in the shop was to stand at the left of Mr. Sargent, below the platform. I had the liberty of being in the prison at large, nights, and also of speaking to the convicts under the direction of the officer.

I observed some peculiarities in Rogers's conduct as early as Thursday or Friday, preceding the homicide. I think it was Friday that he came in from his walk, and complained that Mr. Braman had scolded him for being gone too long. I think he said Mr. Braman charged him with having been out an hour, when he had'nt been gone more than fifteen minutes. His manner was agitated at this time.

I noticed nothing more till Sunday morning. After the men had taken their breakfasts, I offered him in course, some of the extra food that had been left. (It was my duty to distribute it in that way.) He at first refused, but on my urging it, took some and ate it. I noticed his appearance as he was eating, and observed that he looked wild. He also ate his food with great voracity.

The next I noticed about him was on Tuesday morning, after he came into the shop to work. He looked wild then, and stared about a great deal. He was sent for, out of the shop, for something, (to be showered, probably,) and when he returned he looked agitated. Tuesday evening he was reported, and left out on account of the noise which I had heard the night before; (I did not then know that it was he who made it.) I saw him sent into "solitary," Tuesday night. Be-

tween seven and eight o'clock, I heard a noise in the direction of his cell; could distinguish some of the words, as "Oh dear!" "I shall die!" "I shall die!" I went down to the door of his cell, and found that it was him, and asked him what was the matter. He said that they were going to take him up to the old prison and keep him there until his time expired. He said Sam Robinson and Cole had told him that they were coming the checkerberry-game over him. (*In reply to a question from one of the counsel*, "why he came to go down to Rogers's cell and hold this conversation with him?") — It was my duty to attend to any noise or any call of the convicts, and for this purpose I had the liberty of the prison, not being locked in my cell. When I went to Rogers, he was standing up with his hands crossed. He told me further, at this time, that *they* were all down upon him. I inquired of him who he meant by *they*, and he said the officers and prisoners. I asked him, if *I* was not his friend. He replied, "you may be." He went on, "they have got a notion that I am lazy: but I am not lazy. When I went out last time from here, I made nine hundred pair of shoes, and went a fishing:" this, in a connexion which I didn't understand. He went on further with many incoherent phrases which conveyed no idea to my mind, and which I cannot now recollect. In the course of a few minutes he came back to the same conversation as he began with, interrupted with the exclamations now and then, "Hark!" "Oh dear!" He said he had held his head down to sweat the checkerberry off, and had felt better after it. I said nothing in reply, but asked him if he wouldn't have some water. Without seeming to notice my question, he broke out, "There!" "Did you hear that noise?" "My head is going again!" "What noise?" said I. "Why, that they are going to punish that man;" using an oath. I asked him again, if he wouldn't have some

water. "You only offer me water," said he, "to pacify me : but I shan't live three days." Once during this, he used the word *poco* ; the first time I had heard it.

Mr. Patterson came along and I went and brought some water. When I handed the water to him, he said again, that he shouldn't live twenty-four hours. I had no further conversation with him. I should say, the fear of undue severity of punishment — some punishment to be suffered in future — was the cause of his distress.

Mr. Patterson pacified him, and Rogers went back from his cell door. Between eight and nine he began the noise again. Mr. Patterson ordered me to ring the signal-bell, and have him taken out. After I had rang it, Mr. Corey, one of the officers, came to the gallery-window, and asked what was the matter. I told him Rogers was crazy, and making such a noise as to deprive the men of their sleep. He repeated the term in a tone of ridicule, and went away. Soon after this, I retired myself ; heard something more of the noise, but could distinguish nothing that was said.

I saw Rogers again, next morning, Wednesday, after we had been in the shop ten or fifteen minutes. He came in with his stockings half drawn on, and without cap or jacket. Mr. Sargent said to him, "Rogers, you have run away." He said he had ; and then went on to tell him, "it is too bad, Mr. Sargent, to kill so young a man as I am, in this way. It is your duty to let people outside know about this." "About what ?" "Why," says he, "the warden is going to take me up to the old prison, and keep me there as long as I stay here." He added something about checkerberry being mixed with his food, and declared that he should starve to death. I went off to find the deputy-warden, to let him know the man's situation, as I knew he ought not to be there. When I came back he was gone : (to receive his showering, I suppose.) After this, during the day, he appeared more calm :

so much so, that one of the men remarked that showering had done him good.

Towards night, Wednesday, Mr. Sargent called Rogers to him and said, be sure that you don't make any noise in your room to-night. He promised that he wouldn't, if his head didn't get a-going again. Mr. Sargent requested me to call and see him that evening after he was locked in, to see how he did. At eight o'clock I got leave of the officer on duty, Mr. Francis, and went down to his cell. I asked him how he did. He said he felt better; but "is it possible," he added, "that all these sounds are in my head?" I told him that he had probably been without sleep a good while, and his head had become unsteady: that I had felt something of the same kind myself, when I had been deprived of sleep. "Well," he replied, "I don't know but it may be so." I then asked him if he had taken any food, and he said he hadn't. I advised him to do so, and he said he would. I then left him.

Thursday, before noon, he exhibited increased symptoms of wildness. His eyes were downcast, his face pale, and his features distorted. He came up several times and spoke to Mr. Sargent, but I didn't hear what he said. In the afternoon, as he passed by to go to the blacksmith's shop, I noticed his eyes were rolled up as if he were looking towards the guard-room. Soon after, when he had returned, Mr. Sargent called my attention to his looks. I saw him sitting on his bench with his hands clasped and his face upturned, and as I went down by him to the other end of the shop, heard him using the language of prayer, and then of blasphemy. He would then turn to working, for a little while. After that he would leave off and appear to be in a study, with his eyes rolling round. Being absent from the shop a little while, myself, I came back and found him kneeling at the platform to Mr. Crowninshield. After this I noticed Mr. Braman scolding him. He appeared more wild and ferocious, then, than I had ever seen him before.

I saw Mr. Jaquith and the warden come in and go to Thorn's seat, and while Mr. Sargent was saying something to me, he exclaimed, "Rogers has killed the warden!" I saw a blow, and ran, and was just in time to save Mr. Lincoln from falling. *I heard no words spoken at the time.* Mr. Lincoln was on Thorn's left, and Lauber, a convict, between him and Mr. Jaquith: so that Jaquith was farther off from Lincoln than Lauber.

I saw Rogers, Thursday evening, when they took him out of the cell, and removed him to the old prison. He looked more calm. I saw him again Saturday morning, the 17th, in company with Mr. Fogg, and McGinnis and Diamond, two convicts. I went and got some breakfast for Rogers. Mr. Fogg went up to the door and asked him if he wanted some breakfast. He told him to stand back from the door, and then opened it. Rogers came out hand-cuffed. He appeared in a state of deep despondency. Mr. Fogg led him along the arch to the west end, and put his food down on a bench, and then helped him to fix his dress. Rogers sat down to eat, but began to smell of it, and then swore most profanely, that there was checkerberry in it. I tasted of the food, and then he ate some after me. He also smelt of his coffee, and swore there was checkerberry in that. Mr. Fogg asked him if he would have some water. He drank freely, and said there was no checkerberry in that. He then counted us, excepting himself, and said here's just enough for a game of loo. He then turned to me and asked me if I had seen Simmons. I replied that I had, that morning. "No you havn't," says he: "You may have seen his body, but he is dead long ago. He was brought down here and put into one of these cells, and I heard him groan his last." "Don't you know," says he, (without addressing himself to any one of us in particular,) "that there's a new order of things now-a-days? — Bodies walking about without souls? I don't know

whether *mine* is so or not. I tried to halloo this morning, and couldn't; and tried to raise blood from my finger and couldn't." He then called our notice to his knee-joint, saying the swelling was owing to the checkerberry-game. Mr. Fogg told one of us to go and get a bed for his room. He said that there had been a corpse in that room about five hundred years. We gave him a bed and left him.

I saw him again at a distance, Sunday: and Tuesday, again. I asked him then, if he had any antipathy against the warden. He said, no. I asked him if he hated Mr. Braman. He answered, no, to that, but after some hesitation.

I had never heard Rogers swear before this time. The laws of the institution forbid profanity, and it is seldom heard in presence of an officer. On this occasion he indulged in it frequently. Twice he spoke of Cole and Robinson, and once he coupled Bray's name with them. He said that they had used the checkerberry-game at the Auburn prison, as they told him; and that a man couldn't stand it more than three days. I think it was in the conversation, Tuesday evening, that he said he heard Cole and Robinson whispering these things in his room.

I have noticed Rogers as a silent, melancholy kind of man, generally; but during this whole week his appearance was changed. He had a pale look; his eye was wild, sometimes fixed and set, and sometimes rolling round. I heard him sometimes muttering to himself. I think I heard him tell Mr. Sargent, Wednesday morning, that he was "regular."

Cross-examined. My real name is William Bradley. I went to prison under the name of Savary. I slept in cell No. 1, of the prison, the 15th of June last. I did not hear the testimony given yesterday, but came in from Randolph this morning. I was witness on the former trial, and testified, so far as I can recollect, the same as I now have.

William Burnett, called and sworn. (This witness had

been rendered competent, partly by pardon, and partly by writ of error). I was pardoned out of the state-prison in November last; know the defendant Rogers; have known him two years and a half. This was when I worked in the upholsterer's shop. I have never worked in the shoe-shop. From one to two months before the homicide, Rogers said the officers and warden were combined to destroy his life. I don't know what caused him to suspect this. He said that he could hear voices talking about his cell at night, saying that they were going to shut him up and keep him there. He used frequently to tell me something to this amount. At times he looked wild, and would come to me as if he had some errand, and then would forget what it was. He said, within a week of the homicide, that his food was poisoned. I told him it was no such thing. His remarks were frequently incoherent. He was confident he shouldn't live to get out. I have known him so lost at times as not to be able to keep account of his work, from one part of a day to another.

Cross-examined. I obtained my pardon without any application on my part. I had been in prison four years and one month, and had two years and eleven months to stay. I had mentioned what I have testified, to some of the convicts. I told it to Mr. Bemis the week before I was pardoned. I had heard that some of the prisoners had been pardoned to testify in the case. Convicts were not allowed to talk, but they did so when the officer was not in hearing. Rogers found an opportunity to speak to me, when the officer was at the other end of the shop. The conversation I had with him might have been a fortnight before the homicide. I thought him deranged, or not in his right mind, ever after I knew him. I went to prison in September 1837, and knew Rogers soon after. I thought he considered me his friend and made a confidant of me.

James H. Bradley, called and sworn. I was called as a

witness on the former trial by the government ; was pardoned from the state-prison ; received my pardon from the hand of Mr. Parker, the state's attorney.

I know the defendant, Rogers ; have known him five years or more. I worked in the shoe department ; and he has worked there a year or two, I should think. The first I heard of anything unusual about him, was a noise which I afterwards knew came from him, which I heard, Monday night. The noise was very peculiar ; loud and shrill, like *f* sharp, or *g*, in music. It seemed to come from a person in great distress. I saw Rogers Tuesday morning, in the barber's shop. Mr. Payne told him he had been reported for making a noise the night before, and asked him how he came to do so. He said it was in consequence of his distress. I saw him several times, Tuesday, but don't recollect speaking to him that day.

Wednesday morning, he came into the shop with his dress in disorder and with a wild and haggard expression of countenance. He went up to Mr. Sargent's desk and had some conversation with him. I didn't hear all that was said, though I think I recollect hearing Mr. Sargent tell him, "Rogers, you are out !" "No I an't," he replied, "I am as regular as any body. You'll see." Mr. Fogg came in, and the scuffle ensued. As Mr. Fogg came up to him, Rogers said something like, "they're going to kill me ;" or "don't kill me." After he was showered, I thought there was an alteration in his appearance for the better. About nine o'clock he asked me if I thought there would be any punishment against him for seizing Fogg. He gave as an excuse that his head was disordered. I saw Fogg, and he said he had'nt reported him. Rogers came to me again in the forenoon and asked for garden-seeds. He complained at this time also, of his head. I had no farther conversation with him till Thursday.

Thursday morning, when I was washing at the sink, he came to me and wanted to know if I had ever heard of such a thing as checkerberry's poisoning a man. I told him I hadn't, and wanted to know why he asked. He replied "they are going to poison me with checkerberry." I asked him, "who?" And after repeating the question, perhaps a half a dozen times, he answered, "the officers and warden." I asked him who told him so; and he said, Sam Robinson and Cole. He then asked me if there was anything singular about his eyes. I told him no; except that one was inflamed. He then repeated the story about the checkerberry game, and said he shouldn't live; (I can't say precisely how many days.) He said it over again, and this time gave the number of days only half of what he had before. He said the only way of getting rid of this checkerberry game, was by holding his head down and sweating it off; that he had tried it the night before, but as soon as he held his head up again, it came back. I saw him holding his head down several times during the day after this.

During these two or three days, I think the prisoner's demeanor and general conduct was quite different from usual. He was frequently running up to the desk. I heard him muttering to himself, also. He spoke about this checkerberry game as if it were a reality; and as if it had full possession of his mind. I saw him go up and kneel down to Mr. Crowninshield. When he came back I noticed that he was in tears. I witnessed the homicide, and went to Mr. Lincoln's assistance. I saw Mr. Jaquith, but did not notice his taking any part in assisting, and thought he appeared very much frightened. I am confident there were no words spoken at the time of the homicide, nor any other sound uttered than a slight groan from Mr. Lincoln. I was at my bench, eight feet distant from where Mr. Lincoln stood.

Cross-examined. I am brother of the witness Savary;

I was the first person who went to Mr. Lincoln's help, but am not aware that my pardon was owing to good conduct on that occasion. It was not granted at my application. My testimony is the same as on the former trial, except in relation to the circumstance of the garden-seeds, which I have since recollected.

Ebenezer Payne, called and sworn. I am deputy-warden of the state prison ; was such in June last ; have known defendant ever since he first came to the prison. The 15th of June, Mr. Sargent came to me, and said there appeared to be something wrong about the defendant. Mr. Crowninshield the same day wanted that I should have him removed from the shop. I told him I would see the warden and let him know. I spoke to Mr. Lincoln at the guard-room, and told him what Mr. Crowninshield and Sargent had said. He asked me what I thought about it. I told him, I thought it as well to take him away and shut him up. Says he, "he will do well enough as he is : better let him be." I thought he had better be taken out of the shop, and shut up, because Mr. Crowninshield didn't want him, and not because I thought he was dangerous. I *did* tell the warden that I thought Rogers was not right, but it was from what others had told me, and not what I saw myself. I didn't think much of what Mr. Sargent said, because he was a green hand and didn't understand him. He hadn't been at the prison more than six weeks, except when he had been in there occasionally as an errand-boy. Mr. Sargent may be thirty-five years old now. I believe Mr. Lincoln, when he said Rogers will do well enough as he is, also added something about his "shamming it like Washington." Washington had been a convict. We never knew whether he was insane or not, when he was at the prison. I have heard since, that he is insane. I remember a man by the name of *Richard Roe* : can't say whether the warden considered him insane or not. He kept *Peters*

shut up. I saw Rogers after the homicide, and heard him say that he hadn't slept for fifteen nights. His appearance and conduct did not seem natural that night, nor for several days after. Immediately after the homicide, Rogers, when I spoke to him, would run on about the checkerberry and poco game; repeating the word *poco* very fast. I heard him tell Mr. Curtis, one day, that he should be hung. Mr. Curtis asked him if he had killed the warden; and he said, "they tell me I have, and I shall be hung for it: Mr. Lincoln was a man extensively known, and I shall be hung for example's sake: Prisons wouldn't be safe without it." Rogers *did* complain of his head; said there was a buzz in it, and all about it. I think he said he had got some sleep, Friday night, and felt better for it. He had had no bed previously: I was afraid to trust him with one.

Cross-examined. We have had some cases of simulated insanity in the prison. I have known men afraid they shouldn't live their time out. Lauber was afraid he shouldn't live his time out: but I advised him to put off dying, and he concluded to. I had Rogers put into the old prison that he might not disturb the other convicts with his noise. I thought his conduct after the homicide not to be natural, because I should suppose no man would appear natural who had committed such a crime. I saw him between four and five, in the afternoon of the 15th, and he seemed natural then. If I had seen anything wild about him, then, I should have had him taken care of.

THURSDAY, FEBRUARY 1. The defendant's testimony proceeded.

Baylies Braman, called and sworn. I am connected with the prison as contractor's foreman; have been so these three years past. My place is in the upholstery department. I have known the defendant nearly three years, and for a year and a half, had him under my immediate superintendence.

Since then, he has worked in the shoe-shop, because there was not room enough in the upholstery department. But he has still worked at the same business, and used to come to the other shop for his materials and directions. I saw him as often as ten or fifteen times a-day. The shoe-shop was a story above the upholstery, in the same building.

The first I noticed of anything unusual in Rogers's behavior, was on the Monday or Tuesday preceding the homicide. He came to me and said he didn't wish to go to the blacksmith's shop again, for they had been playing a game upon him. (He went to the blacksmith's shop to heat his pressing-iron or goose.) He said Cole and Sam Robinson had tried to make him think that it was the officer of the blacksmith's shop talking to him. He said that they had frightened him almost to death. I replied to him that it was a pity he should get scared. He said that they had frightened a man in that shop before, almost to death, who knew more than anybody else in it. I made him some careless answer, thinking it of little importance.

Some time, Wednesday, he came to me and said that the warden was going to shut him up, and he was afraid if he did, that he shouldn't live to get out. He came to me a number of times that day, and wished me to speak to the warden to save him from being punished. He said he was yet a young man, and if he lived to get out, he meant to lead a different life. He spoke of having a very bad pain in his head, over his eyes: If he wasn't shut up he should be well enough the next day: all he wanted was a little sleep. I think he spoke to me that day, of hearing voices. He heard them talking, nights, about him. When he came to me, he was commonly in tears, and would constantly beg me to speak to the warden not to have him punished. I told him it was all his imagination. I didn't think the warden had any idea of punishing him in the manner he spoke of. In the

afternoon I promised him that I would speak to the warden if he would go to work. The warden came through towards night. I told him I didn't think Rogers was in his right mind. He replied, "he is no more insane than I am. There is Washington up at the Hospital, shamming it in the same way." I told him Rogers was afraid of being punished that night. He replied, if he behaves himself, he won't be.

Thursday morning, he came to me and said, "you told me right: I was not punished last night." But he went on to say, that he heard Jo Hutchinson, and either Cole or Robinson, talking all night so that he couldn't sleep; that they said, it was too bad to kill Rogers; that they were going to shut him up the rest of his time. In the afternoon, soon after dinner, he came to me and wished for leave to go up and speak to the warden, himself, at the guard-room. I told him I couldn't give him liberty unless the warden sent for him, and that the warden would pass through the shop and then he would have an opportunity to speak to him. He came down to the upholstery shop several times and wished me to speak to the warden, for he was going to shut him up. He spoke several times that afternoon about the checkerberry or poco-game. He was going backwards and forwards much of the time, and didn't do but very little work. Between 4 and 5, I gave him a mattress to stuff for Mr. Crowninshield's own use. I wished him to finish it that night and do it well. He said he would. I told him he might have Simmons, (who worked by him,) help him. Shortly after, I went up to give Simmons instructions about it. I found Rogers, then, gone up to Mr. Sargent's desk and kneeling down. When he came back, he came to the mattress and took a knife and went to ripping it. He was, then, shedding tears. He begged me to go to the house to see the warden, and to ask him to give him ten stripes and have it settled. He said if he was shut up he shouldn't live twenty-four hours. He

said that either Cole or Sam Robinson had told him, that after a man had had this checkerberry game played on him, he could never live over twenty-four hours. I told him, repeatedly, that he wouldn't be punished if he attended to his work. I told him I couldn't go after the warden, but when he came through the shop he could speak to him. At this time his head was thrown back, he wasn't looking at his work, and cut the binding. I spoke to him two or three times to look on his work. He kept begging me to intercede for him with the warden, and asked me if I didn't hear his father praying up at the house. I told him to pay attention to his work, and if he didn't make any noise he might be assured he shouldn't be punished; and that if he didn't attend to his work, I should have to report him. I intimated to him just before I left the shop that I would speak to the warden when he came through. He said, "I thank you, and I will do any thing in the world for you. I will get down on my knees to you." I left the shop, and hadn't an opportunity to speak to the warden again before the homicide.

I saw Rogers between ten and eleven that night, at the old prison, with the deputy-warden and another officer, who went up to iron him. He was standing up, then, in the back part of the cell. When we went in, he said, "let me see the warden's face once more before I die." I didn't see him again till the former trial.

When a convict goes up to the house to see the warden, he stands outside, at a window, the sill of which is about breast high. The distance between them, if both stand close to the window, would be two feet or more. The window is grated. Rogers used knives at his work habitually. Two of these, (*exhibited*), were in common use, short ones, and they had a larger one, *this*, (*identifying it*); don't know whether it was on the table at the time. They had such a knife commonly, and at all times had access to knives for their work.

When I told Rogers, Tuesday morning, that what he had said was all his imagination, he said, "I suppose it is as you say." He appeared to be in great distress when speaking of his troubles, frequently shedding tears. He spoke rapidly ; in a different manner from usual. His general appearance differed from what it was ordinarily. He didn't pay attention to his work and was restless and uneasy. He came down to the upholsterer's shop frequently and unnecessarily. He had a wild look about the eye. There was but little sense in what he said when he ran on as I have described.

Cross-examined. Rogers worked in the upholstery shop about the time of his additional sentence. I recollect so long ago as then, his showing something strange in his appearance. After he had been arraigned, but before his case was disposed of, he came up to the warden one day to the desk and shed tears about his sentence. He asked Mr. Lincoln if he would insure him for as little as a year's sentence. He said he was afraid he should never live to get out. I have never heard but few complaints about Rogers's work. A cushion which he did the day of, or the day before the homicide, was found stuffed wrong. The warden usually came through the shop soon after dinner ; and if a convict wished to speak to him, he usually waited till then. (*In answer to a question from a juror.*) Rogers's general conduct was good ; and so was his temper.

Lucius Patterson, called and sworn. I am a watchman at the prison ; was such in June last, and have been such twenty-one months. I know the defendant ; have known him, to distinguish him, some eight months. I was on duty in the prison, Tuesday night, the 13th, in the fore part of the night. Some twenty minutes past seven, my attention was directed to the solitary cells, by a noise. I went and found Rogers there, making the noise, talking and muttering over to himself. It was a melancholy kind of noise. I ordered him to stop, and went from the cell to the south side, and waited

a while, and heard the noise again. I went back and tried to reason with him about disturbing the prison, so, telling him he would subject himself to greater punishment if he kept on. I can't say, whether at this time he told me the cause of his making the noise. But after I came back the third time, in consequence of his renewing the noise, he said they were going to starve him, and he should'nt go out, till he went out feet first. He said they were talking over his head. I asked, "who?" and he said he heard Mr. Bean's voice, (one of the officers.) I told him it was no such thing; for I had locked the door on the inside, and had locked all the officers out. I then asked him what he meant by being starved to death? if he hadn't had his customary rations? He said he had. I told him he wouldn't be harmed if he obeyed the rules and regulations. After telling him this, he broke out, "is it all my imagination?" "am I going to be crazy?" I found reasoning would do no good, and told him to lay down, and he would have no trouble about his bread and water. He stopped his noise, and continued quiet till half past eleven. He made some noise then, but stopped when I went to him. When I talked with Rogers the first time, I told Savary to ring the alarm-bell. He was present one of the times that I was at Rogers's cell.

Cross-examined. Savary said Rogers was crazy and had better be taken away.

Bernard Lauber, called. (Objected to by the state's attorney, as incompetent, from having been convicted for receiving stolen goods. Record offered, showing his conviction of that offence, and his commitment to the state prison.)

BEMIS. We object to the admissibility of the record, as disclosing no disqualifying offence. Infamy can only be made out, by showing a conviction for Treason, Felony, or *crimen falsi*. This is not Treason, plainly. Nor is it the *crimen falsi*; on principle, or by authority.

That it is not felony at common law, I cite, 4 Black. Com. 38.

Nor by our Statutes ; *Stat.* 1804, c. 143, and *Rev. Stat.* c. 126, § 21. The indictment itself, contains no averment of the act being a *felonious* one. (This was admitted by the state's attorney, who contended however, that the Revised Statutes had dispensed with the necessity of the allegation.)

The COURT intimated that if the acts amounted to a felony, it might be sufficient, without using the term *feloniously*.

BEMIS. The authorities have never gone so far elsewhere ; and in our own state, the case of *Commonwealth v. Squire*, 1 Met. 258, seems strongly to imply that the distinction between felonies and misdemeanors, as to the mode of averment, is yet maintained here.

PARKER. Moral turpitude is the criterion of disqualification ; and this offence has all the characteristics in that regard, which most others have, which are reckoned infamous among us.

The COURT, per SHAW, C. J., after some deliberation, remarked that the absence of authority on this point, was a little surprising, though they had always entertained the belief that it was considered a disqualifying offence. But regarding either the nature and aggravation of the offence, or its moral turpitude and its statute punishment, they were of opinion it rendered a convict infamous.

The witness was accordingly rejected.

Louis Dwight, called and sworn. I am Secretary of the Prison Discipline Society, and have been such about eighteen years. My chief business has been to investigate the condition of prisons, and prisoners. In connection with the same subject, I have given my attention to lunatic prisoners ; have also given attention to the condition of the insane, in insane-asylums, and so have had an opportunity to acquaint myself with the characteristics of insanity ; have probably seen from two thousand to four thousand cases of insanity.

I saw the prisoner on Friday, the day after the homicide. Very early in the morning of that day, I received a note from Mr. Minot, the late chairman of the board of inspectors, expressing how much he was shocked at the assassination of Mr. Lincoln, the warden of the state-prison, which was the first knowledge I had of it. I called on him, and he suggested that an effort should be made in behalf of his wife and children. I undertook it, and went over in the forenoon to the prison, to ascertain the condition in which Mr. Lincoln had left his family. When there, I asked to see the prisoner: had never known him before. The deputy-warden readily assented, and I was conducted to a cell in the wing of the old prison. There I saw the prisoner; his appearance was unlike what I expected to see in the state-prison at Charlestown. His beard was long, as though he had been unshaved for several days; his hair uncombed, and his whole dress slovenly and disordered. He was told to come out in an authoritative manner, such as might be expected from the officer, on such an occasion. I did not much blame him. I felt myself, as might naturally be supposed I should feel towards one who had committed such an outrage. But, on observing the man, his whole aspect, air and manner, conveyed to my mind, the idea of a lunatic. He came slowly out of the cell, and sat down on a bench at the west end of the arch. I asked him why he killed Mr. Lincoln. He said he had not killed him; he was not dead; he had seen him that morning, with one or two others. I asked him if he had any grudge against Mr. Lincoln, on account of his additional sentence, as a second comer. He said he hadn't any; that his sentence was lighter than he expected, for he hadn't got but six months, and he expected a year. He went on, then, in regard to his troubles. He spoke of the popo-game, of which I had never heard, and knew nothing; of the voices telling him to "tread up," "tread up." He mentioned the voices of Cole, Hutchinson

and Robinson ; and said, they said a man never lived more than three days under it. They said, " Rogers is a damned fool " ! " Rogers is a damned fool " ! " He will never go out till he goes out feet first." He spoke of sweating it off by holding his head down.

I tried in various ways to see what I could make of the case, and used all the ingenuity I possessed in regard to insanity. I felt that I was talking with a man who had murdered my friend, and I taxed my faculties to understand the state of his mind. He spoke constantly of the popo-game, and put his hands to his head complaining of a pain there. I asked him to look me in the eye. I did this, because I had tried the same thing with Clarke, who feigned insanity successfully for three years in the state-prison. Rogers's eye, I should say, was dull and bewildered, rather than wild. He had complained of loss of sleep, and said he hadn't had any for twelve nights. Rogers looked me directly in the eye, and went on talking as before. When Clarke did this, I always suspected his simulation. Rogers's look was as if his thoughts accompanied his words ; he seemed to feel everything he said. His conversation was very rapid, and he repeated some words and phrases frequently. My interview with him lasted from half an hour to an hour. I offered to pray with him, and he consented to it, and kept perfect silence. I should think it was this morning that he spoke of his father, as a good man, as a man of prayer. I left him, and went about my errand of collecting subscriptions for Mr. Lincoln's family.

Saturday morning, the 17th, I went over very early to see Doctor Bell, at the McLean Asylum, in Somerville. I asked the doctor to accompany me to the prison and see Rogers. He was reluctant to go ; but I thought it important that he should, and urged him. I had previously received a note from him regarding the shower-bath, as used in the prison, for a punishment. I knew it had been given up at the Asy-

lum ; but I had rather a favorable opinion of it, myself, and this gave an interest to my inquiries about Rogers. I did not express any opinion to Doctor Bell, about Rogers's insanity. If I said anything at all, it was that he was insane, or pretended to be. But I was careful to leave the doctor to his own examination, if he should make any, and to judge for himself. He finally consented to go if I would wait and breakfast with him. We went together and asked to see the prisoner. When we approached his cell, he uttered a loud outcry as of distress and alarm ; but I couldn't distinguish what he said. Rogers was told to come out : he obeyed and went to the west end of the arch. He told his story ; Doctor Bell conducting the conversation for the most part, while I stood by and listened. It was much the same as before, about the popo-game. I undertook to find out what he meant by *popo*, but could get nothing intelligible. So far as I heard him at this time, his conversation related to this game being practised upon him, and that it would kill him in three days. It was much the same as before. He said he had had a little sleep and felt better.

On Sabbath morning I visited him again. I had asked Mr. Adan, (one of the former inspectors,) to accompany me, but he declined, saying he couldn't see the man. Accordingly, I went alone. I again talked with him about Mr. Lincoln's being dead, and when he expressed a doubt of its being so, I asked him if he would like to see his body. He said he should, though he didn't seem to believe that he had killed him. I asked Mr. Payne, if he could see the body, and he said he thought he would be permitted to, when the funeral services were performed. Then, for the first time I witnessed very great emotion on the part of Rogers. The blood rushed to his face and head, and he seemed convulsed in every muscle. At the same time he uttered a most maniacal and pitiful cry. Apparently it was one he could not control or suppress.

I was desirous of witnessing the effect which the sight of the dead body would have upon him, and went over for that express purpose. I missed seeing it, however, as the body was brought out while I was performing the services in the chapel.

I went again to see him, that same afternoon, about six o'clock; had some conversation with him. He ran on in nearly the same strain as before, though he said he felt better, and had got some sleep. Once in the course of my interviews with him, (I think, however, it was on Friday,) I asked him about the shower-bath as a punishment. He said he didn't dread it much; should as lief have it as one stripe. He made no complaint about the treatment he had received, nor against the warden or any other officer of the prison. He spoke of a whirl in his head, and of hearing people go by his cell. He spoke of the warden as a good man, and of his having no enmity against him nor any body else. After the cry which he uttered on Sunday morning, he spoke of the homicide as being a dreadful thing to Mr. Lincoln's family and friends, and to his own relatives, and of its being dreadful that it should be done by a young man like himself just coming out of prison. This was after I had told him Mr. Lincoln was dead.

On Friday morning I noticed that he ate ravenously. At another time when I saw him eating, I observed him smelling of his food, and at the same time declaring that there was checkerberry in it. This was the first I had heard of this term *checkerberry*. On Friday morning, I think, I pointed to the blood upon his hands, but it didn't seem to produce any effect upon him. I combed his head, and found a small sore upon it. I did not see him on Monday, but saw him on Tuesday and Wednesday, and afterwards on the 2d of July, at the Leverett street jail. I was then struck with the change. His eye was brighter and more intelligent and clear. His skin looked better. I asked him if he heard any voices there;

and he said he thought he had heard some whispering by his window once, but wasn't certain. I asked him if he heard any voices about popo, and he said, no. I drew his attention in these interviews to his story, and he repeated it in substantially the same manner, and to the same effect. I have always found him very docile, frank and direct. He has answered my questions, apparently without reserve or concealment.

Cross-examined. I have not come into personal contact with many cases of simulated insanity, though I am aware it is a constant source of difficulty in penitentiaries. I went to Dr. Bell instead of Dr. Walker, the regular physician of the prison, because he was a personal friend, and because I thought him at the head of his profession. I had great confidence in his skill and judgment in matters of insanity. I do not know that it occurred to me to go to Dr. Walker; I had been so in the habit of consulting Dr. Bell in matters of insanity that I went to him as the first person, from force of habit. I had been told that the officers had had it enjoined upon them not to speak of Rogers's case. I think it was Saturday morning that I first noticed his beginning to look better. There was a door at the entrance of the arch, the unlocking of which might have been heard by one awake, in Rogers's cell.

(In answer to a question from a juror.) I never thought Clark's case one of real insanity; have never been deceived, to my knowledge, in any other such case.

The counsel for the prisoner now proceeded to call the testimony relating to the hereditary insanity in the family of the prisoner, and to his own early history.

Abner Rogers, called and sworn. I am father of the prisoner. Abner was thirty years old in December last. When he was an infant, at his birth, he was very small and it was not expected that he would live. The night after he was

born he went into a fit, and we thought that he was dead. I went to some of the neighbors and told them of it, but on my return, the nurse said that she saw signs of life, and he finally came to. He was ever after a sickly child and used to have fits, which always came on about the same hour of the night. These fits continued six or seven years. After they left him he used to have turns of groaning at about the same hour. Sometimes they were so bad that we used to go to him. As he grew up he outgrew them somewhat, but I have always heard something similar when he has been at home. He remained at home till he was seven or eight years old, and occasionally lived with me afterwards. He never received much, if any, education. I lived in Newbury, the west part of the town, away from the road, and there was but little opportunity for him to get any schooling. While he was with me he could not read or write; cannot say whether he can, now. I had an older son, Beniah, who was deficient in understanding. As he grew up we discovered his want of sense, and were obliged to keep a careful watch over him to prevent his doing mischief, particularly to small children. When Abner was three years old, one day that his mother had gone out, she heard the child scream; and on running in, found Beniah with a piece of a scythe which was stuck in a handle, for the purpose of reaping corn, striking Abner on the head and face. He made two wounds, one cutting through the nose, and the other not so deep on the forehead. Beniah was then about seven. We used to confine him in a particular chair, and in hot weather, tie him under a tree. We did this to him till after he was, probably, thirty years old. He used to be mischievous, also, in the way of breaking vessels. Once he threw a stone at his mother, and hit her on the head and hurt her badly.

My sister was crazy at two different times. She thought she had committed the unpardonable sin. She was twice

affected so. The first time being deranged from two to four months ; the last time not so long.

Question by Counsel for defendant. Can you name others of your own, or wife's family, who were reputed to be deranged ? (Objected to, by state's attorney. Ruled by the court, that the question may be put ; reputation of an ancestor's being deranged, coming from those of the same family, being analogous to proof of pedigree in the same manner.) Abner's great uncle and aunt by his mother's side were both reputed crazy. I have a brother who often tells me that he hears the noise of crickets in his head. My wife has a brother who has had bad fits, and who appears deranged before and after them ; they have to watch him continually. Abner was a nervous, sickly child, and required more attention than my other children.

Cross-examined. Abner left me and went to live with his brother-in-law, when he was about eight years of age : he lived in the same town. He stayed with him two or three years ; and then lived about, at different places, working at shoe making. He was a slim, sickly boy from seven to twelve, but I don't recollect his having any serious illness. I recollect he was once attended by Doctor Robins, of West Newbury. He was not an idler, but generally about something ; whether for good or for bad, when out of my sight I can't say. He worked some at shoemaking, but I am unable to say whether he could finish a pair of shoes, himself. Don't know that he has ever set up business for himself. He has never been treated as an insane person, nor confined as such, to my knowledge. I have received letters from him, while at the state-prison, but believe them to have been written by the chaplain. I don't know that he ever went to school. I have had ten children : none of them were insane, but Beniah. The sister with whom he lived is a very nervous and sickly woman. All my children are ailing in body. Stephen has

had fits ; he is now so weak as to be unable to be present at this trial. My own mother was troubled with hysteric fits ; and my wife's mother died in a fit at my house. I am 64 years of age, myself.

Eliza Pilsbury, called and sworn. I am cousin, by marriage, to the prisoner ; am wife of Solomon Pilsbury ; have always lived within a mile of Abner's father ; have known Abner, more or less, 14 years. He used to board with us when I was the wife of Benjamin Kimball, now dead, who was also Abner's cousin : he boarded with us two or three months ; this was after he came out of prison the first time. I think I recollect his having a strange turn, then. One night when he was sleeping in the bed-room with my children, he called to my husband to get up and come into the room. He thought there was some one taking the child from the bed. My husband got up and went into the room and found nothing the matter, and told him he thought he had been dreaming. This was at twelve o'clock. Abner got up and came into our room, and walked the room the rest of the night. As I saw him by the light of the lamp, he looked wild and strange ; he appeared so next morning. I don't think he had been drinking : he had not been away that day. I have heard him groan, nights ; and my husband has been to him a good many times. He always looked wild after waking up from these turns.

Cross-examined. I don't know that he ever took medicine for these turns, or called in a doctor.

Jonathan Randall, called and sworn. I reside in Kingston, New Hampshire, 15 or 16 miles from Newbury. My business is that of a farmer and a shoemaker. I know the defendant ; have known him between 10 and 12 years. He came to board with me at Nottingham, in 1831, before he went to prison the first time, and boarded with me six weeks. He had strange turns at that time. He used to walk his cham-

ber, nights, after we went to bed, and I would sometimes get up and go up to find out what was the matter. He never would give me much, if any, answer ; and sometimes would keep on walking nearly all night. The next day he would appear dull, and as if in a deep study, walking about with his head down ; he had not been drinking, to my knowledge. The last time he came to my house, (after he had been in prison,) he stayed through the day, and at night went to bed, as I supposed. About midnight, I heard a noise in his room and got up and went to it : I found him standing up in a kind of reverie ; told him to go to bed. He made no reply, and an hour afterwards I heard him walking again : next morning I heard him go out of his room, and went in and found he had not been a-bed. By advice of my wife, I followed him down to the square, and found him at the tavern. I asked him to go home to breakfast with me ; he did so, but ate nothing and appeared very wild.

Cross-examined. He came to stay with me at this time for his health ; he complained of a pain in his head. He did not frequent the tavern, or have companions : his talk was sometimes wild.

Herman D. Rogers, called and sworn. I live in Newbury, within a mile of Rogers, senior ; am cousin of Abner, jr. He has worked for me, at times, shoemaking. I noticed something strange in his appearance once in Oct. 1836, after he had been to prison the first time. I was going home late one night, (perhaps as late as 11 o'clock,) and found a person lying by the road-side, nearly prostrate, with his face downwards. I came up to him and found it was Abner. I took hold of him and raised him up. He attempted to run, and ran a short distance to the passage-way leading to the house, which was stopped by a board put across it. He ran against this board, and it threw him down. I came up and asked him what was the matter. He said, not much ; he had a head

ache. I urged him to go into the house. My brother helped carry him in. My wife asked, who it was, and what was the matter; and if it were somebody who was drunk. I told her it was Abner Rogers, but that he wasn't drunk. He was not inclined to make much conversation for some time. After he had been sitting in the chair some time, he got up and went to the glass and fixed his dress. He said to me, "Herman, you can take me to Ipswich, if you wish." I told him that I had no such idea, that I only wished to take him in, and take care of him. He did not seem inclined to make much conversation. After sitting about an hour he seemed better. He then said he would go home, unless I got him there to carry him to Ipswich. I told him I didn't wish him to go anywhere. He said he would go home, (to his father's, as I supposed,) and left the house. I saw him about a week afterwards, and he made an apology for having given me so much trouble. He said he could not tell how long he had been lying by the road-side, when I found him, but he remembered lying down with a pain in his head; from a bad cold, he supposed. I didn't observe any appearance of his having been drinking, from his breath or otherwise, and don't think he was in the habit of drinking. My wife observed that she thought he couldn't be drunk. I thought his general appearance was singular, and different from ordinary.

Cross-examined. Abner was not in my employ at this time. He worked for me before he went to prison the first time. I can't tell how long he had been lying by the road-side, but I had passed that way two hours before, and he was not there, then. He could make a pair of shoes, but was not a good workman. He could not write, I think, but could read somewhat. Ipswich was the place of his first trial.

Mr. BEMIS now stated to the court that he was prepared to show, if the evidence were competent, that *Washington*, to whose case the defendant's had been likened by the warden,

was really insane and was now confined as such. The court, per SHAW, C. J., deemed the testimony irrelevant. BIGELOW. We offer the evidence also to the point of impeaching Dr. Walker's skill, under whose treatment the case passed. *But by the court.* "You cannot impeach a witness's skill by proof of particular instances of unskilfulness." The counsel then stated that they were prepared to show that Mr. Lincoln's fixed maxim in regard to insanity, was, to admit no man to be deranged, through fear of its impairing the discipline of the prison, and that therefore his judgment in regard to Rogers's simulation was of no account. But the court also deemed this to be collateral and immaterial. The defendant's counsel then proceeded to call their other witnesses.

Henry K. Frothingham, recalled. By the records of the prison, Rogers's punishments previous to those already read in answer to the questions by Mr. Parker, were; Oct. 5th, 1840, *Showered, two barrels, for improper conduct*; Dec. 9th, 1840, *Showered, one barrel of water, for talking*; Jan. 2d, 1842, *One day's solitary, for misconduct in room*; Jan. 10th, 1842, *One day's solitary, for disorderly conduct*; Jan. 29th, 1843, *Same for same*; March 9th, 1843, *One barrel of water for disorderly conduct*. And these are the only punishments recorded against him during these periods.

Warren B. Parker, recalled. I have no recollection of any conversation which Tulley said he had with me about threats made by Rogers. I don't know that I should recollect it if there had been such a conversation, as such threats are quite common and I make a practice of not noticing them.

Henry Rocheford, called and sworn. (Objected to, as having been convicted of petty larceny in the police court of the city of Boston. Pardon produced by witness.) I live with Mr. Parker, the restorator in Court Square, close by. Last July I had charge of the Hospital at the House of Cor-

rection in South Boston, and there knew Joseph Tulley. I had considerable conversation with him about his testifying on the former trial, both before and after he went over to court. He told me he never heard Rogers say any such thing as he testified to, on the trial. He told me that he never heard Rogers make any threats more than any body else. He said that he was sorry he had got to testify to that which wasn't true; but that he had told the story to Capt. Robbins, the superintendent, and it wouldn't do for him not to testify the same thing again.

Cross-examined. I left the House of Correction two and a half months ago. I had no conversation with Tulley, till after he came from court. He was asked how much he would get for his fees; and he said, enough to set him up in business as a barber.

Luther V. Bell, called and sworn. I am superintendent and physician of the McLean Asylum; have been such seven years and upwards. The Asylum is situated about half a mile from the prison, in the new town of Somerville. I have had a good deal of experience in cases of insanity, having had upwards of one thousand patients under my charge at the Hospital, and having devoted myself for several years previous, to the study of Insanity.

I went to see the prisoner, Rogers, in company with Mr. Dwight on Saturday morning, the 17th, at an early hour; went by his invitation. I had no previous knowledge of the defendant. After some delay at the prison, we were invited by the deputy-warden and chaplain to go to his cell. The deputy-warden unlocked the door, and we heard a momentary outcry, indicative of fear and affright. It seemed like that of a person just roused from sleep, and I satisfied myself that this was the case. Rogers was then taken to his cell, to the end of the passage-way, and sat down on a seat, with us around him. The conversation at first was between him and

Mr. Curtis, about sending for his father. His manner during this, was calm, composed, and natural. Mr. Dwight, I think, then asked him why he killed Mr. Lincoln? Upon this subject, he began at once a strain of incoherent and wild remarks, showing plainly, that his was a case of real, or highly simulated, insanity. These, he continued, until I designedly turned the conversation to other subjects. His detail related to certain voices which he had heard at various times, and from several of his fellow convicts, whom he called Jo Hutchinson, Sam Robinson, Bray, and Cole; which conversation announced to him, that he was to be the object of the injurious treatment or influences of the warden. The warden had learned from Mr. Curtis, (the chaplain,) as I gathered it, a knowledge of the *popo-game*, which Mr. Curtis had himself brought from the Auburn prison, and this was to be practised upon *him*. The warden was also going to make another injurious attempt upon him, by putting checkerberry into his food. I asked him to explain what he meant by this *popo-game*. He replied that they drove you round and round your cell; that he had stood it three nights, but that it would be impossible for him to hold out twenty-four hours longer. I asked him, what he meant by *checkerberry*? whether the common evergreen, that grows in the woods? He said that it wasn't *that*, but something that set your brain in a whirl, in a moment. He said that these voices came to him, principally, from the top of his cell; that some of them were addressed to him, others were about him; some of them were in the language of reproach; as, "damn you, they'll kill you;" others were commiserative; as, "Rogers, you have got to die"—"you'll never go out of the prison until you are carried out feet foremost." When the conversation was turned to other subjects, he conversed naturally in relation to them, showing no disposition to recur to these troubles. I counted his pulse twice at this interview, and found it over

one hundred at each time. His tongue was slightly coated, his head cool, face shrunken, and no intolerance of light in the somewhat dark place where we were. When he began on the popo-game, and the injuries practised on him, his manner was exceedingly rapid, repeating sometimes three or four times with great volubility and rapidity, such phrases as, "tread up" — "tread up" — "d—n you, they'll kill you;" this, spoken with a loud voice, and great intensity. After an interview of about an hour and a quarter, I left him. Mr. Curtis left us after a few minutes. I think Mr. Payne remained the whole time, and invited me to see him again.

I saw him again, the Tuesday following, the 20th. His general manner and appearance were about the same. But there was a very considerable difference in his manner of treating these imaginary communications. His conversation at first was natural and calm. When it turned on the subject of the game, he resumed his old rapidity, but every now and then, threw in a sentence like this, "Well now; I suppose there wasn't anything in all this;" or "the devil had put these things into my imagination." I felt his pulse twice at this interview, and found it about one hundred. The general tenor of his communication was the same in substance as before; but there were many new details and little circumstances added. On turning the conversation to other points, e. g. to his past history, he talked freely, and with propriety, making no allusion to the subject of the voices, which wasn't again referred to, at this interview. Mr. Fogg, the assistant, was present, but kept at a distance.

Friday of the same week, the 23d, I saw him again; and let him know who I was, and the object of my visits; that I came to ascertain the state of his mind. I told him this, in order to see if he would affect any different symptoms, or exaggerate those which he had already shown. His conversation was essentially the same as before: not introducing the

subject of these voices himself, and explaining them as having been merely his own imaginations, or put into his head by the devil. I tried to induce him to treat them as realities, by speaking of them as such, myself: but could not succeed. I would say to him, "when you heard Cole say" thus and so. He would reply, "I don't suppose there was anything at all in that." Perhaps a single observation, might be considered an exception to this, when he said that he still thought his life in danger. His pulse at this time was one hundred.

I saw him again, the day after his arraignment, at the Leverett street jail; and at this time there was no difference in his manner of treating the subject. He spoke of it, only when questioned about it.

I saw him again at the jail, a fortnight before the first trial. I designedly made no allusion to his hallucinations, and he did not refer to them himself.

At the first interview I had with him, he gave an account of trying to sweat the checkerberry out of him by hanging his head over the bed; and of his distress in finding the blood rushing up from his heart to his head. The three first interviews were from an hour and a quarter, to an hour and a half, each. The two last, less protracted. I made an attempt at one of the interviews, as I have stated before, to throw him off his guard by letting him know who I was. He then said, I thought you had something to do with the Connecticut State prison. I suppose he thought I was Mr. Pillsbury, the warden of that prison, who was there Saturday.

I had no specific plan of inquiry, but took a course of examination to obtain the manifestations as they might occur, and then followed them as judgment dictated. On Saturday, he said if he had killed Mr. Lincoln, as Mr. Fogg said he had, it was because this popo-game had been played upon him. He didn't, in any instance, recur to his hallucinations unless he was led to them; and then he would go on until the conver-

sation was turned. On Saturday morning, in reply to a question from some one, "how he felt," he said, "better"—that he had got some sleep. He spoke of the voices for the most part as coming from the upper part of his cell. Once only, as he was going into the blacksmith shop to heat his iron, he heard, "it will kill you — damn you, it will kill you."

On Tuesday morning, I think, he expressed himself convinced that the warden was dead.

I have attended the trial and heard all the evidence that has been given in this case.

As to my own opinion. At the time of commencing these investigations, and until I came into court, I knew nothing of the opinions of others. I had no other impression upon my mind at the time of going to the prison, than that the act was a wilful murder.

Judging from my observations alone, I have come to the conclusion that the case was one of real, and not simulated insanity; that the defendant was laboring under that species of insanity, which is accompanied with a belief of hearing false voices or hallucinations. The great mass of evidence which I have since heard, supposing it to be true, corroborates my first opinion; and I have heard but few things inconsistent with it. I should have wanted no further evidence to strengthen my first impressions.

My reasons for the opinion I have just given, are: That the form of insanity, with which this individual appeared to be afflicted, is one not generally recognized as insanity in the world at large, and would hardly be attempted by one competent to feign it, so likely would it be to fall short of its object, viz.: of convincing people that a person is insane who only hears false voices. Yet the form of insanity is one well known and understood, and not unfrequently met with, by those who have the care of the insane: That the delineation

of it by this man, if it were feigned, was consistent, exactly true to nature, and not mingled with any symptoms which do not properly belong to this type of disease. The communications reached him solely through one of the senses: that of hearing; and he never pretended that any other was affected. Were a man to feign insanity, the chances would be infinitely greater that he would feign some of the more palpable forms, as raving mania, or dementia, than this. The probabilities are, that a man, in such a case, would be unwilling to have a person, who he knew had come to examine him, go away without showing him some extravagance or striking indication of derangement. He would certainly have made a reference to his complaint before him. The capacity of the individual in the present case is hardly up to the average of intelligence; and in view of his having been so long in prison, and of his probable opportunities for seeing insanity elsewhere, the improbability is very great of his attempting a form of disease so delicate, and requiring so much knowledge to meet its exact features.

I considered it a case of disease at the time I saw him. My belief is that the same delusion had existed for some days previous. It would seem sufficiently obvious that one laboring under such apprehensions of danger and suffering, would be impelled to acts of violence in supposed self-defence. Patients subject to hallucinations are very liable to paroxysms of violence. The probabilities of a lucid interval in this case, between the time of the occurrence of the facts testified to immediately preceding the homicide, and the homicidal act itself, are very small. I have never known this form of insanity simulated. I should consider that if an outbreak had occurred under the circumstances here stated, it would evidence an uncontrollable impulse to violence.

(In reply to a question, "whether some external, exciting cause, as the appearance of a fancied enemy, &c., would not

precipitate a paroxysm?") I have supposed that the impulse was generally from the internal feeling, rather than the external object. The enemy or object may excite that feeling and so produce the outbreak. I should think, as a general thing, that hallucinations, by way of hearing false voices, much more commonly occurred to the insane, by night, than by day. It is a well-settled fact, that after paroxysms of violence, the insane appear comparatively calm and tranquil. (The following case, illustrative of the last observation, and of the transitory duration of the disease in some instances, was here given by the witness.) I had a case put under my care two or three years since, of a young man from Maine, who had killed his father in a paroxysm of insanity, supposing he was the devil. The young man for a short time previous to the act had shown some slight symptoms of depression or mental alienation, but nothing of an alarming character. One day his father invited him to go out and work at making hay. While so engaged, as the father was stooping to go through a pair of bars, the son struck him over the head with repeated blows of a pitchfork, and killed him. No legal proceedings, that I am aware of, were had against him. But being brought to the Hospital immediately after, (within a week,) he then appeared calm, recognized his delusion, and never showed signs of insanity afterwards. He remained with us six months, and was discharged as well.

Self-pollution is considered a great predisposing cause of insanity. Causeless suspicions against individuals, the hearing false voices, and violent outbreaks, are common symptoms of insanity proceeding from this cause. Many of the persons so affected have an idea also of being the subject of calumny. It was my impression, from what I saw, that self-pollution was the exciting cause of disease with the defendant, though I did not make inquiry in regard to his habits in that particular. I have not known the sense of taste affected in connexion with

that of hearing. I do not perceive anything in the nature of the punishments in this case, more than any other exciting cause of a general character, which would have tended to produce an outbreak in the defendant. A course of conduct which is soothing and tends to calm the feelings, would tend to allay the excitement ; the opposite, to aggravate it.

Almost all authorities are to the point that hereditary insanity predisposes to the same disease. So do fits, if epileptic.

My own impression in regard to this case, was, that the shock of the homicidal act had thrown the defendant off his delusions, and that they would recur in some other manifestation, though perhaps temporarily concealed. Yet I have heard of many cases where the disease was only transitory, from Dr. Woodward and others, though I am not familiar with cases of such short duration in my own observation.

A belief in the existence of conspiracies is a frequent symptom in this form of disease ; so, the mistaking the relations of persons, as a friend for an enemy, or *vice versa*. I should say that those are most apt to be mistaken in this way, who are either almost entire strangers to the insane man, or his nearest friends.

(The Doctor here gave the following case as illustrative of the insane man's belief of fancied injuries and his power of concealing his malady from others.) I have a case now under my care, of a midshipman who, some time in the year 1841, sailed from New York to the Brazilian station. He was gone six months ; from September to March, I think. During the passage he was not supposed to be disordered in his mind, nor until within a few days of his being sent home, was any notice taken of his conduct being strange. While on the station in South America, he was put under arrest for some insolent words to his officer, and in a moment of irritation, (as was supposed,) threw up his commission. Being sent home, the commanding officer, or the Secretary of the Navy, retained

his resignation for a month or two, in order to give the young man a chance of recalling it, if he were so disposed. But no application being made to that effect, he was formally discharged from the service. Some time after, proving to be unequivocally deranged, his friends thought of making application to have his name restored to the list, in order to entitle him to half-pay ; and investigated the circumstances of his resignation, to see if the act were not void by reason of insanity. Examination brought to light a manuscript journal, which he had kept from the time of his sailing from New York down to the time of his entrance at the Hospital, filled with proofs that he had been laboring under hallucinations the whole time : That he had heard the voices of the captain and the officers and all aboard, insulting him and abusing him with the vilest epithets ; that he had struggled against it, and borne with it, till, (in his own phrase) forbearance had ceased to be a virtue ; and being unable to endure it longer, had quitted in disgust. This abuse, and the epithets, such as he had written down, were of course all imaginary. During all this time, his conduct had been so nearly sane, that it had attracted no remark from his fellow officers. These facts being reported to the Navy Department, his commission was restored, and he is now on half-pay. He is at present at the Hospital, and a hopeless case.

In cases of outbreak, the impulse is so sudden, that the patient is hardly conscious of his acts. It often occurs, that after the paroxysm has ceased, the patient has little or no recollection of the act itself, though he remembers pretty correctly what preceded, and what followed it.

The usual pulse of a person in full health is from seventy to seventy-five. One hundred, therefore, is a high pulse, and would indicate that the system was laboring under some disease. I do not consider it, of itself, a proof of the existence of insanity in the defendant, but one, among other circum-

stances, indicating it. Apprehension of evil, and uneasiness, are types of the form of insanity which I consider to exist in this case. Sleeplessness is another attendant symptom, which might be expected.

Cross-examined. Rogers's answer to Mr. Dwight on Saturday morning, was, that if he had killed Mr. Lincoln, as they said he had, it was because they played the popo-game on him. His ideas of time were very much confused. In the latter interviews there was an utter confusion of dates. When he spoke of the voices coming from Cole, &c., he did not say that he saw the persons themselves. On Friday morning he gave me to understand that he was right, and recognized his past delusions, as such ; though he made some exceptions. I have not had much familiarity with cases of simulated insanity. The rules of the Asylum are so framed as to prevent the admission of fictitious cases.

I consider that insane persons generally know the distinction between right and wrong. They readily submit to discipline, and are operated upon by motives of hope or fear.

When the paroxysm of this form of insanity operates, its effect, in my opinion, is sufficient to overwhelm reason and motive, and for the time being, to make the person like a raving maniac. The insane impulse differs from that of anger, in this respect : that, if equal in intensity in both cases, the angry man can bring reason and motive to bear as antagonizing principles, which the insane cannot. I suppose that an imaginary injury would have more effect upon a diseased mind, than a real one of the same kind, upon a sound mind. The impulse, in the former case, generally expends itself in a single act. If an insane man sees a face at the window, he breaks it out, at once. The man of sound mind reflects whether there is no other way of reaching the object, without doing intermediate injury.

I should not think Mr. Dwight's statement of the maniacal

appearance of Rogers at the first interview, if his appearance were rightly apprehended by that gentleman, entirely in keeping with the other symptoms in the case.

I made inquiry after the physician of the prison, Dr. Walker, the first morning I went there. Afterwards, I did not think of it. The prison is a public institution, and I saw no reason why I should not make a visit for the purpose of professional examination.

Mr. BEMIS here proposed to ask the witness a question as to the authority of some of the medical citations which had been made.

By the Court. So many treatises and dissertations on this subject of insanity, have lately appeared, that the court have not had time to examine them, and decide upon their juridical authority. They hope hereafter to be able to name the treatises to which they may give sanction. But as a large number of works have been cited in the present case, without objection from either side, and some of them of very recent appearance, we think proper to permit the inquiry.

(The question being only put in regard to the two treatises in French, from which the largest quotations had been made) — I esteem Esquirol and Marc as writers of the highest authority, on matters of insanity : the former, on its physical diagnosis ; the latter, on its connection with jurisprudence.

(In answer to a question from a juror, whether the Doctor recognized an essential distinction between insane and sane people, or whether he did not consider all persons more or less insane) — I am unable to state any definition which shall mark the distinction between a state of sanity and that of insanity. I think no palpable line can be drawn between the point where sanity ceases, and that where insanity begins ; but that it depends upon the circumstances of each case, to say whether one is of sound mind or not. Yet I regard the distinction between those generally considered and treated as in-

sane, and those commonly esteemed of sound mind, as sufficiently obvious and practical.

(In answer to a question from the counsel for the defendant) — I consider the present, as a case of positive and decided disease.

Samuel B. Woodward, called and sworn. I am superintendent of the State Lunatic Hospital at Worcester, and have been so upwards of eleven years ; for ten years previous to taking charge of the State Hospital, was visiting-physician and director of the Lunatic Retreat of Hartford ; and for six years, was physician of the Connecticut State Prison, at Weathersfield. In the course of my experience, I have had upwards of two thousand cases of insanity, more or less, under my charge, and have attended many others, besides.

I have attended during this trial, and heard all, or nearly all, the testimony which has been given. Taking the facts testified to, to be true, I am of opinion that the prisoner was insane at the time of the homicide. I think his case would generally be considered one of monomania arising from hallucinations.

My reasons for this opinion are, that, in the first place, the form of the insanity is one very difficult of simulation, and but little known in the community. Then, as shown in the prisoner's symptoms, was very coincident in all its bearings with the cases which we have ; very much so. All the false impressions seem to have come from one, or at most, from two senses ; and nothing in the trial has shown any other source.

I have never heard or known of this form of insanity being simulated ; have had considerable experience in simulated insanity, at the Connecticut State Prison, and elsewhere.

The calmness of the defendant after the act, coincides with common experience. The outbreak of an insane person seems a safety-valve by which to let off his accumulated excitement.

As to the shortness of duration of the attack. The out-

break, or apparent commencement of the disorder, is frequently abrupt and instantaneous. The other faculties of the mind than those affected, may remain comparatively vigorous. The case of *Titcomb*, (reported 10th An. Rep. p. 86,) illustrates this. There, the insane man showed the greatest cunning in concealing his crime. (The case was given at length by Dr. Woodward.) Cases of as short duration as the present, are not infrequent, though they can hardly be called common. A patient was brought to the Hospital to consult me, some weeks ago, who was possessed with a notion that the surgeons were in quest of his body for the purpose of dissection. None of his relatives, except his brother, whom he made his confidant, had ever discovered that anything was the matter with him. And when I first saw him in company with his brother, I was in doubt myself, which of the two had come as a subject for medical treatment. After a while, in the course of the conversation, he stopped, and asked me "if I thought he was a pig." A regular course of treatment relieved him of his difficulties, and he is now nearly or quite recovered.

In *Davis's* case, mentioned p. 83 of my report, the insanity passed off while he was in confinement in jail, and before he took his trial.

So, the memory of what occurs during a paroxysm, is frequently obliterated. (Repeats the case of the mother, who nearly killed her two children to save them from a drunken father, as reported, p. 93, of his report.) In this case, the subject had lost all recollection of the insane act, until reproached with it, by some person calling her a murderer. Then a painful dawning of memory, accompanied with an apprehension of some greater enormity than she had actually committed, was excited.

It is not uncommon for the insane, or those whose delusion consists in hearing false voices, to have a passing consciousness of their delusion, and yet immediately after, recur to the same

delusion. Thus, we have a patient with us, who, for many years, has fancied that he can hear persons saying of him, "T. is going to take a pill:" and yet he can easily be reasoned out of it, and will take a pill when necessary, though the next day he will suffer the same imaginary trouble as before.

I should say that an imaginary wrong, or other exciting cause of an insane impulse, would lead to a more violent act, than the same kind of motive or feeling operating upon a sane man. The difference seems to be in the absence of antagonizing motives or principles of conduct. Thus, we had a patient, a lady, who fancied she heard the judges telling her she must strip herself naked to save some person's life. And she would immediately tear off every particle of clothing upon hearing the false voice, without regard to who was present.

Onanism is a frequent cause of insanity. In cases produced by it, the patient is generally actuated by motives of jealousy, and subject to groundless fears. He is frequently taciturn and shy in his habits.

Fits indicate a nervous temperament, liable to be affected by the causes of insanity. So, where there is an hereditary predisposition to insanity, exciting causes act upon the mind with more force.

My view of this case, is, that Rogers, seeing Mr. Lincoln enter with a stranger, and imagining his time had come for punishment, felt an irresistible impulse to the homicidal act. My experience would lead me to think that all his thoughts were engrossed by this one idea of punishment, and that his other controlling motives for the time being, ceased to act.

FRIDAY, Feb. 2. The Defence called one further witness.

Isaac Ray, called and sworn. I am superintendent of the Maine State Hospital; have been such for about three years past. In that capacity I have had considerable experience in cases of insanity, and have otherwise devoted a good deal of attention to the study of the subject, particularly to

its medical jurisprudence. I am author of the work on the Medical Jurisprudence of Insanity, bearing my name.

I have attended during this trial, and heard all the testimony which has been given.

Taking that to be true, I believe that the defendant was insane at the time of the homicide. I have not heard a single fact testified to in regard to him, during the week of the homicide, which I consider incompatible with his insanity. I think that he had not that control over his actions, which he had when well. Insane impulses often come on very suddenly, and *appear* to be uncontrollable. As an evidence of this, we often see insane persons promising not to be guilty of violent acts, and expressing sorrow for them as soon as done, and yet continuing to repeat them.

In regard to the reasons for my opinion, I can say but little different from what has already been said by Drs. Bell and Woodward. One other fact in addition to what was said by them, struck me forcibly : that there seemed to be no constant effort on his part to convey the idea that he was insane. He was comparatively calm, even during the day of the homicide, and about his work ; and at no time were his acts such as to give a very strong impression to those around him that they were the acts of an insane man. The symptoms, also, were not such as most readily give to others the idea of insanity.

I should call it a case of acute mania, having hallucinations for its predominant feature.

In regard to the physical symptoms, I should say that these showed that something was the matter with the man. The state of his pulse, his coated tongue, and shrunken features, plainly showed that he was diseased in some way. I presume insanity is always connected with a bodily disease ; and the physical symptoms are always to be noticed in treating it. I should think that the pulse was generally accelerated in the acute forms of mania.

I am not certain of an aggravation of the defendant's disorder, till the very day of the homicide. Then, the evidence shows him to have been much more agitated and uneasy.

I think I never saw, heard, or read, of a case of simulation of this kind. It would be extremely difficult to counterfeit it, so as not to be detected. Cases of hallucinations, by way of false voices, occur more or less in every insane hospital. Such voices are heard more frequently at night than in the day time. A certain degree of sleeplessness is always an attendant symptom at the commencement of the disorder.

The present case is certainly one of short duration. I think I never knew of one so short, where the hallucination was so prominent.

The delusions of the insane are frequently concealed and lie hid in the mind for some time before they manifest themselves. Where they come on gradually, I think the patient most generally keeps them to himself.

Where the paroxysm of insanity is very severe, and the conduct of the patient very violent, I have generally found a breach of consciousness in his mind. He appears to have lost a certain portion of time out of his recollection. I have always inquired of patients in regard to the degree of their consciousness, and I cannot think of a single instance where one was conscious of everything during the paroxysm. They will say that they recollect something indefinite. The patient knows, perhaps, what he is doing; but is not aware of the relations and effects of his acts: *e. g.* he will rush to the window and break out the glass, under a belief that it will relieve him, when a moment's reflection, if he could exercise it, would satisfy him that it would be of no avail. At such a moment he has not a perfect control of his acts; perhaps none at all. It is a common thing for the insane to mistake friends for enemies.

In answer to the question, "whether an insane person would

use more violence in the gratification of his insane propensity, than a sane person excited by anger, revenge, &c.," I can only say, that the insane man is disposed to do all he can to accomplish his object.

Crises are sometimes observed in insanity, when the force of the disorder seems to spend itself at a single moment, or upon some particular occasion.

The calmness of the defendant after the homicidal act, is in accordance with general experience.

The vice of self-pollution is often the cause of insanity. Hereditary insanity is a predisposing cause to it, to the extent of about one half the cases that occur, as is estimated. Fits are also a predisposing cause, if epileptic.

The violence of paroxysm may be as great in transient, as in permanent mania. The present case, in regard to the uncontrollability of the act, seems precisely like those to be read of, where one maniacal idea has engrossed the mind, and the act is spoken of as springing from an ungovernable impulse. Everything in such cases leads to the supposition that the insane man's reason is overborne by an irresistible impulse.

I do not consider the shortness of the duration of the defendant's affection an essential particular.

Homicidal and suicidal propensities are found to coexist.

Marc and Esquirol are high authorities ; as high as any other, on the subject of Insanity. I think highly of Esquirol's capacity to investigate and discriminate Insanity, but should not extend the remark to his notions of treatment.

Cross-examined. I may, in some minor points, have impugned Esquirol in my treatise, but I generally coincide with him. Marc's work had not been published, when I wrote. I have not had much experience in simulated insanity, though I have had some. The symptoms of the pulse, &c., are indications, *among other things*, of the existence of mental disease.

I do not consider the defendant's hallucinations to have arisen from dreams. I have known persons dream of hearing voices in their sleep, but have never known them dream, two or three nights in succession, of hearing the *same* voices.

Homicide and suicide are more closely connected together in insanity, (I mean to say) than in a state of sanity.

The prisoner's counsel having stated that they rested here, Mr. PARKER called some witnesses for rebutting testimony.

Joseph Tully, recalled. I knew Henry Rocheford in the house of correction, both times that I was there, after my discharge from prison. I had some conversation with some person once or twice about testifying. I told Rocheford, before the first trial, that I did not expect to be called as a witness. The conversation I had afterwards, was with some other person; but I never told Rocheford or any other person that my testimony was false. I had the horrors at the time I talked about it.

George H. Clarke, called and sworn. I was employed at the state prison in June last, as foreman of Forster & Company. I oversaw the chair-making department in the room under the shoe-shop. I saw Rogers Wednesday morning, in the stone-shed, preparing to be showered. He went into the bath and came out, saying "it was a hard one." I did not observe anything unusual in his appearance at that time.

I was present with Mr. Dwight when he saw Rogers, Friday morning. When we went into the arch, Rogers came slowly out and sat down on the bench. Mr. Dwight spoke to him, and asked if his name were Rogers. He answered, yes; and then answered another question, how old he was. He replied, thirty, I think. Mr. Dwight then asked him what Mr. Lincoln had done to him that he should kill him. He hesitated a moment, and then said that Mr. Lincoln wasn't dead—that he had seen him there that day with others. Rogers took his food and commenced eating in the same manner as I had

seen him before. He looked dull, as if he had been without sleep ; and at this time had no bed. He was generally very slovenly in his appearance.

Cross-examined. Rogers came down into my shop Wednesday morning, and asked if he could speak to Joe Hutchinson. I asked him, why ? He said he thought he heard Joe talking to one of the officers about him. I asked him what division Hutchinson went in. He said, the sixth. I then told him he couldn't have heard him ; it was all his imagination. He said he thought he was right over him in the third ; and he guessed he didn't hear him. He added, that he didn't feel very well. I had some further conversation with him about making a noise. I told him he ought not to make such a noise. He said he knew it. I told him further, that if he repeated his noise, they would carry him up to the old prison, and shut him up there. He said if they did that, he shouldn't live. I advised him to go about his business, and he promised that he would, and went to his work. Afterwards he came to me two or three times, and spoke about being shut up ; said, if they did it, he shouldn't live.

(In reply to a question by Mr. PARKER,) — I didn't notice anything unusual in his appearance Wednesday.

Daniel Russell, called and sworn. I was an officer in the state prison in June last ; superintended the stone-department where the shower-bath is ; saw Rogers brought in to be showered, Wednesday, the 14th ; saw him as he came out, and heard him say " it was a hard one." I saw nothing different in him then, from usual. I was also present Thursday noon, when he was showered ; didn't hear anything said by him then. I saw nothing unusual about him. He made no remonstrance against being punished.

I saw him again Friday, either morning or noon, when Mr. Dwight was present ; heard him make the reply to Mr.

Dwight that Mr. Clarke has testified to ; — that Mr. Lincoln wasn't dead ; that he had seen him there that morning. Mr. Dwight asked him if he killed him on account of his additional sentence. He said he hadn't received so much as he expected. Mr. Dwight showed him the blood on his hand, and told him it was *that* hand that had done the deed. He looked at it, but said nothing. He didn't look quite so bright as usual ; seemed as if he hadn't had his regular sleep. I saw him again at some time subsequent to Sunday, and asked him how he was getting along. I told him then that he had killed Mr. Lincoln. He said, they say I have ; and added, do you think I shall be hung ? I told him that he would have a fair trial.

Thomas Russell, called and sworn. I was an officer in the state prison in June last ; had charge of the cabinet-shop where the sofas are made. Rogers's bench was close to the door of the shop, and twenty-two steps off from where I stand. Thursday afternoon, the 15th, between two and three o'clock, I saw him coming from the lower shop, (the chair-shop,) up through the cabinet-shop into the shoe-shop. Mr. Lincoln passed by him. I noticed Rogers looked hard at Mr. Lincoln. Mr. L. pointed with his cane for him to go up to his shop. He obeyed, but I thought he looked as if he wanted to clench the warden. Mr. Lincoln was four or five steps from him, and I was twenty steps off from both. He looked back a second time at Mr. Lincoln as he went into his shop. I didn't notice anything in Rogers's hand at the time.

In April last, I forgot to say, one day Mr. Payne came and asked me to oversee both shops. Rogers came up to me and went to talking. Says he, "I haven't a great while longer to stay, but before I leave I'll pay the warden for it. I shouldn't have got so much additional sentence if it hadn't been for him."

I saw Rogers, Thursday, P. M., the day of the murder, about two o'clock. I heard Crowninshield say that he appeared somewhat unwell; didn't notice anything peculiar about him, myself. I saw him again, between four and five, coming down through the shop to go into the yard to get a wooden horse. This time I spoke to him: I said, "Rogers, you are making a mattress—an't you?" He said he was. He didn't look any different from common, that I noticed. I saw him again Sunday, and gave him his breakfast; asked him how he got along: pretty well, he replied; and got up to take his breakfast. He took up his coffee and smelt of it, and said there was checkerberry in it: so he did with his mashed potatoes and meat. I asked him if he thought I would give him checkerberry; and he said, no; and went on eating. I watched him; didn't see but that he ate as usual. He began about Sam Robinson, and Hutchinson, and Cole, and said that the popo-game was played on him, and that he shouldn't live more than three or four days. I told him to drop that subject; that it was real nonsense to carry it on. He stopped upon that. The next words he said, were, "I am a smarter man than a good many officers, here, take me to be." Mr. Dwight, I think, then came in and began to talk with him. He ran on about the popo-game. Mr. Dwight asked him if he knew what he had done: that he had killed the warden? He replied, "Oh, no! it can't be." He asked him if he would be convinced if he saw the body. Rogers said he thought that would convince him. Mr. Dwight combed his hair. It was very dirty. I have seen a number of cases of feigned insanity, and they made a practice of dirtying their heads. It was so in the instance of Clarke: he besmeared himself all over.

Sunday morning, when Mr. Dwight prayed with Rogers, he used the expression in his prayer, "that the prisoner might be delivered if he were insane when he did the deed." Upon

this, I noticed Rogers's face to flush up, as if he were pleased. In the afternoon, Rogers was taken out by me to see Mr. Lincoln's body. He looked at it five minutes, I should think. Mr. Eddy said to him, "you see what you have done, Rogers." He said, "no, it isn't possible; I couldn't have done it; it must have been the hand of the devil." Mr. Eddy replied, that it was his hand, and not the devil's. I took him back to his cell, and had some conversation with him. He asked me, if I thought he was in his right mind when he did the act. I told him, I supposed he was: furthermore, that I hadn't any doubt but that he was in his right mind. He then asked me if I thought they would allow him to see his father. I told him, yes; if he requested it. He seemed to be very much distressed about him. I then asked him if he should like to see his mother. He didn't know but that he should. I have not communicated these facts to any person before.

Cross-examined. I did not see much of Rogers the day of the homicide. I recollect his using the threats about the warden in the terms I have testified to — am used to hearing threats made by convicts — don't know that I should have remembered these in particular, if it hadn't been for the murder afterwards — don't know that I should have remembered the look Thursday afternoon, but for the same reason — never mentioned them before to any one — to Mr. Parker, nor any one else. Mr. Parker may have called me as a witness from my having told some of the officers, after the first trial, that I wondered he didn't call more witnesses. I never expressed the opinion to any one, that I thought Rogers wasn't insane; may have talked with Mr. Bean, within a day or two, about coming to testify; won't say but that I have. I don't know that I ever said, that "Rogers ought to be hung up without judge or jury;" may have said it; won't swear, that I have not said it.

In regard to expressing an opinion about Rogers's insanity,

I may have mentioned to one or two of the officers, that I thought so. I think I told you (Mr. Bemis) so, at the prison, before the first trial. You recollect you asked me, what I knew about the case, and I told you I didn't believe but that he was in his right mind. (The witness being here asked, if he hadn't just said that he had never before told any one his opinion, that Rogers wasn't insane, could make no reply. The chief justice intimated that he had distinctly made that assertion.) I am positive that Mr. Lincoln came through the shop, Thursday afternoon ; am as confident of that, as of the rest of my testimony. It was the warden's duty to give information against convicts so as to have them punished, as second-comers ; don't know that Rogers knew of this. (The cross-examination showed some other contradictions in this witness's testimony, than those above given.)

Ebenezer Bent, called and sworn. I was a contractor's agent at the state prison in June last, in the sofa-departments. I had my place at the west end of Thomas Russell's shop. I was present at the showering, Wednesday morning and Thursday noon ; saw nothing particular in defendant's appearance. When he came out of the bath he didn't appear any ways strange. I didn't observe anything especially strange about him, Thursday, at all.

Cross-examined. My place did not afford much chance of seeing Rogers. I didn't see him a great deal, at any time.

Johnson Bean, called and sworn. I am a watchman at the state prison ; have been such since the 20th September, 1841. I know the defendant ; inquired him out when I first went to the prison ; have occasionally had charge of the prison at meal times. I have frequently seen Rogers left out, on being reported. On one occasion, some time between the first of April and the first of July, 1843, when Mr. Braman had reported him, for not doing his work right, as I was going with him to lock him up in the solitary cell, he used language of

this kind: that "it was a hard one for him to be punished so, but that it was well known that Braman was one of the d—d'st rascals in the United States, and that old Lincoln was another; that Braman wanted no better sport than to report him, and that Lincoln would punish him for every little offence; but that he would fix him before his time was out." I reported the language to Mr. Lincoln, but he turned it off, as not worthy of being noticed.

Tuesday, the 13th, I had some conversation with Rogers. While the convicts were locked up to take their breakfasts, I heard a kind of groaning noise, and on searching, found it came from Rogers. I asked him why he made such a noise. He said the warden was going to shut him up. I asked him, what for; and he said, for reporting a story about Sam Robinson. I asked why he violated the rules of the prison so, when he knew he would be punished for doing it? He said he didn't break them unless he was provoked. I asked him why he didn't govern his temper; and he replied that he couldn't, always. I saw him every day except when he was in *solitary*; saw him as he passed the kitchen with the rest of the convicts, twice a day at meal times; didn't notice anything unusual about him. I took him to his cell after he was showered, Wednesday. He said, then, that it had done him good; he should behave better for the future. He asked me, if I thought the warden was going to shut him up. I told him if he would obey the rules of the institution, he would have no further trouble. I was a witness on behalf of the prisoner, on the former trial; have disclosed to yourself, (Mr. Parker) since that, my knowledge of these threats.

Cross-examined. I brought the defendant back to prison from the court-house in Boston, after he received his additional sentence as a second-comer. He said he hadn't got so much as he expected; Mr. Lincoln had spoken well for him; and appeared pleased. I can swear positively that I men-

tioned the threat I have testified to, to Mr. Bemis, when he asked me before the trial, what I knew of the case ; perhaps, not in the precise words. The reason I didn't mention it on the former trial, was, that I felt somewhat embarrassed at being called to testify, as it was the first time I had ever been a witness in court. I have heard convicts make threats, but always report them. In the conversation which I had with Rogers, Tuesday, he said further, that he had heard the officers talking about shutting him up. He told me, that he should never be discharged the regular way. I asked him what he meant ; and he said that some had gone out feet first from that place. He should die, if he were shut up.

Mr. Bemis here stated that he felt called upon to take the stand to contradict the last witness in regard to the statement of what he had told himself at the prison, and also to contradict Thomas Russell in the same regard. Accordingly, being sworn —

I have no recollection of Mr. Russell's ever having told me his opinion that Rogers was not insane. I do not find any statements of his among the notes of evidence which I took at the prison, preparatory to the trial, and feel very confident that he could not have made any such, as the officers whom I examined made a point of not telling me their opinion. This was under Mr. Sumner's advice (the inspector), who, I understood, recommended that a general silence should be preserved in regard to the transaction, until it was investigated in court.

I am confident Mr. Bean never mentioned to me at the prison the threats he has now testified to, in the same terms. According to my notes, he had heard Rogers say frequently, that the warden would suffer for punishing him ; not that he (Rogers) should make him suffer for it, nor in different terms from what he had heard other convicts threaten.

The testimony in the case on both sides having closed here,

Mr. BIGELOW, at half past one, P. M., commenced the closing argument in the defence. He spoke substantially as follows :

MAY IT PLEASE YOUR HONORS :

The duty, gentlemen of the jury, which I am now called upon to perform, is one which I undertake with unaffected misgiving and self-distrust. The task of defending a fellow-being on trial for a capital crime, of speaking the last words in his defence to the tribunal that is about to pronounce finally upon his guilt or innocence, is well calculated to oppress the stoutest heart and overwhelm the clearest intellect. The painful apprehension is ever present to my mind, that some explanation may be omitted, some argument left unuttered, some evidence passed over without comment, which, if properly noticed and urged upon your attention, might influence your minds, and, perhaps, rescue the prisoner from the peril in which he stands. I feel that human life is too precious and sacred a trust to be committed to such feeble hands. In truth, this is no common occasion. The duty which is devolved upon me is to be performed under the awful responsibility of the solemn issue you are trying, and of the consequences which that issue involves. My errors, if I commit any, are fatal, beyond the reach of atonement, and without the hope of retrieval. This is not all. There are circumstances peculiar to this case, in addition to the painful responsibility of a cause involving the momentous issue of life and death, which make it one of unusual difficulty and embarrassment. There is nothing in the prisoner's history, or in the circumstances under which the crime for which he now stands charged was committed, that secures to him the sympathies of the public or of the jury. He has not even the small benefit which might be derived from a good character and a life of virtue. He is stripped of every attribute which might enlist in his behalf your favor and indulgence. He is

brought here a convict. He is described, in the indictment upon which you are now trying him, as having long been an offender against the laws, and at the time of committing the awful crime with which he is charged, as paying the forfeit of his liberty to the violated laws of his country in the penitentiary. I cannot, therefore, address myself to your hearts and sympathies in behalf of one who thus stands, in the outset, before you as a criminal, and with the brand of condemnation upon him. But, it is not to be forgotten, that, although thus a prisoner and a convict, without influence and without friends, he is still a fellow-mortal, with hopes and fears and affections the same as your own ; that life is as dear to him as to any of you, and that he has an immortal soul, as precious in the eye of God as that of the highest and most respected citizen in our community. And so the law, in its wisdom and humanity, regards him. He stands at that bar, furnished with all the security and protection which can be afforded to him consistently with the due administration of justice. During the progress of this trial, you have seen the law in a double aspect ; on the one hand, as an avenger of wrong, seeking the conviction and punishment of the offender ; and on the other hand, in the milder and more benignant character of the defender of the accused, and the protector of the innocent. And thus it is that the prisoner, although destitute of all that wealth, or favor, or influence might do for him, still stands before you surrounded, shielded, and upheld, by the all-protecting panoply of the law.

It is your duty, gentlemen, to discard any prejudice or bias which may have arisen in your minds against him on account of his past life and history. To you, all his past life is to be as nothing. The law requires you to regard him as if he had been brought here, not as a convict from a prison, but as a citizen from his own home. He is to have, at your hands, all the presumptions of innocence in his favor, until he is proved

guilty, and you are to try him without any reference to what he has been or now is, upon the simple issue which has been put to you. I ask you, then, to come to the consideration of this case with clear minds and unbiased judgments ; to try the prisoner upon the law and the evidence only ; and whatever may be the result, you will then have satisfied your own consciences and fulfilled the high and solemn purposes for which you have been impaneled.

I propose to ask your attention, in the first place, to the evidence in the case, bearing upon the point of *express malice*, before presenting to you the grounds of the defence. This method will be more simple, and will tend to enable you more readily to extricate the case from the difficulties which surround it. I shall contend to you, that there is no express malice proved. If the evidence were sufficient to satisfy you, that this crime was the result of a settled, deliberate, and long-harbored intent on the part of the prisoner, then the case of the government would be clearly made out, and the defence which we have set up would be at an end. It is, therefore, essential to the prisoner's case that you should be convinced that there was no express malice. To prove the existence of this malice, the government rely upon three pieces of evidence. In the first place, it is contended that the language to which Jaquith swears as having been uttered by some one, and as he thinks and believes by the prisoner, at the moment the fatal blow was struck, shows that it was the result of a previous, fixed, and deliberate intent, and proves malice aforethought. But look at the evidence for a moment, and consider whether it will justify you in drawing any such inference. If you will recall the testimony of the witness, you will remember that he would not swear that the words were uttered by the prisoner, but only that he believed that they came from his lips. But in a case of this importance, you cannot convict upon *the inferences* of other people. Hu-

man life is too precious to be periled upon presumptions. For my own part, it makes me shudder to see a witness take the stand, as this Mr. Jaquith has done, when he knows the life of a fellow-being is at stake, and, under oath, state his *belief*, not founded upon knowledge, that certain words were uttered by the prisoner, which, if believed by you, must at once and forever seal his doom. It would better have become the witness to have testified that he heard the words from some one, and left *you* to draw the inference, instead of voluntarily thrusting in his own belief in order to prejudice and mislead *you* in your judgments.

But what was the language which he says he heard? "I told you I would!" The change of one word, and that word a single letter, alters the whole meaning of the sentence, and takes from it its bearing against the prisoner. If some third person had uttered it, as he might under the circumstances, very probably, have done, it would have been, "I told you *he* would," and thus deprived it of all its force as against the prisoner. And how can this witness, who is so ready and swift to put in his belief and presumption against the accused, be certain of the exact words, to a syllable and a letter, which were uttered on that occasion? Remember, that he has testified that these words did not recur to his mind for several days after the homicide, and then they came back to his recollection, he knows not how. He did not swear to them when he gave his testimony before the coroner's jury, although he was there called upon to state all he knew about the transaction. He was, too, confused and alarmed at the awful scene of which he was the witness; so much so, that he has, as proved by several witnesses, made a mistake in saying that there was no one between himself and Thorn at the time the act was done, when, on the contrary, it fully appears that Lauber was between them. I say, then, that the evidence of Mr. Jaquith is altogether too vague, uncertain, and unsatisfactory, to form

the basis of even a suspicion against the prisoner of express malice. It is, at best, an inference of the witness, drawn by him from doubtful premises, and under circumstances which deprive it of all claims to your confidence. It is not to be forgotten, in this connection, that among all the witnesses who were present at the tragedy, and who have been called to testify upon the stand, not one of them has sworn to a syllable, which bears any semblance to the language to which Jaquith has so confidently testified. If any such words were uttered indicating so atrocious and malignant a purpose, it is not possible that they should not have reached the ears of some other persons who were in the immediate vicinity of the parties, and have been remembered and brought forward here in corroboration of Jaquith. In an issue of thus awful import, I am sure you will not give a moment's heed to evidence so doubtful and uncorroborated, but that you will require a higher and better kind of testimony to warrant you in believing that any man can deliberately harbor in his bosom so dreadful a purpose, and execute it in so fiendlike a manner.

We now come, in the second place, to a portion of the testimony, upon which the learned counsel for the commonwealth confidently relies, to satisfy you of the express malice of the prisoner. I confess to you that I feel the pressure of this part of the case ; but I hope, and on my conscience believe, that it is to be explained in perfect accordance with the defence which we maintain, even if you believe the evidence which has been adduced in its support. I now refer to the evidence of previous threats by the prisoner against the warden. To sustain this vital part of the case for the commonwealth, the learned counsel has brought forward three witnesses. I shall fearlessly put it to you, gentlemen, that two of these witnesses are utterly discredited and unworthy of your belief, even in a case of much less importance than the one you are now trying. I shall waste no time in remarking

upon the evidence of Russell. I leave him to be judged of by you from his appearance on the stand. It is one of the benefits of a trial by jury, that witnesses are subjected to the personal inspection of the jurors, who can estimate the amount of credence to be given to them from their mode of testifying. The truth is always plain and never to be mistaken, but falsehood often wears a mask, which it is the province of a jury to penetrate and strip off. I think I cannot err in saying, that the manner in which this witness, Russell, has testified, his confusion, his contradictions, his evident bias, have satisfied you that no reliance can be placed on his evidence.

We then come to the evidence of Tully. I find it difficult to speak of the testimony of this man in terms which it seems to require. He is brought here from the house of correction, to which place he has been committed a second time since the former trial of this case in July last. He is put upon the stand, with the pardon of the Executive in his hands to restore his competency as a witness, which he had lost by his sentence to the state prison. His manner of testifying is in accordance with his previous character and life. You could not safely take the life of a brute on the evidence of such a reckless and unprincipled witness. But it is not merely by his character and mode of testifying that he is discredited. He is contradicted and impeached in several important particulars. He tells you that Rogers first threatened the warden as early as September or October, 1842, and that the cause of his threat, at that time, was, that he was in difficulty often, and on the morning of the day when the threat was uttered to the witness, he had been showered as a punishment. Now, in this most important piece of evidence, he is directly contradicted, and in a manner, too, that shows him to be testifying falsely. The record of punishments, which is put into the case, shows that, for more than a year previous to the time fixed upon by the witness, he had not been pun-

ished at all, and when punished, it was by solitary confinement, and not by showering. Thus, all motive for the threat is taken away, and the story of the witness falls to the ground. How can you believe a man who is thus signally discredited? The next threat to which this witness testifies, was in the month of February last: and the motive for this threat, as he states, was, that Rogers believed that the warden was endeavoring to procure a severe sentence against him as a "second comer." But it is abundantly proved, by several witnesses, that the prisoner cherished no ill will against the warden on this account, but, on the contrary, frequently expressed himself satisfied with his sentence, and particularly pleased with the manner in which the warden spoke of him to the court. The first threat, therefore, to which this witness has sworn, is disproved by the record of punishments, and all motive for the second is taken away. But we do not leave him here. We have also produced to you the testimony of Rocheford, who tells you that this Tully had, after the first trial, told him that he never heard Rogers utter any threats, and that he had sworn to them in order that he might get released from imprisonment, and obtain money, as he hoped and believed, from the government. I feel a deep regret, that the government should have deemed it necessary to resort to such polluted sources to obtain testimony to sustain this most important part of their case. I am sure the learned counsel for the commonwealth must have felt the weakness of this portion of his case, or he would not have ventured to strengthen it by the evidence of such a witness; and I think you will be of the opinion, that the government do not advance the cause of public justice by producing here, as witnesses in a capital trial, men rendered infamous by their crimes, who are even now inmates of the house of correction.

In addition to the testimony of Russell and Tully, we have also the evidence of Johnson Bean, one of the officers of the

prison, to prove previous threats by the prisoner against the warden. He tells you that, about three months previous to the homicide, the prisoner threatened, after receiving some punishment, that he would fix the warden before he left the prison. There is one fact in regard to this witness which is very remarkable, and which, in my judgment, seriously impairs his credibility. He was a witness on the former trial. He did not then testify to a single word implying a knowledge by him of any such threat as that to which he now so deliberately and confidently testifies. Can you believe, gentlemen, that if he really knew of any such threat, he would have forgotten or omitted it then? Was he not more likely to remember such an important fact within two or three months of its occurrence, than after a lapse of eight or nine months? What has recalled it to his mind? All the witnesses tell you that, in the prison, it is a common thing for prisoners to utter threats against the officers. How can this witness now recall this particular threat by the prisoner, among all the threats he must have heard in that prison during the last ten months? The witness accidentally let fall, in the course of his examination, an expression which seems to me satisfactorily to account for this sudden revival of his recollection. He said, as I understood his language, that he was never afraid of his life in the prison until this homicide took place. Has the witness, then, finding the evidence was insufficient to convict the prisoner at the last trial, come up here with this additional testimony, in order that, by strengthening the case of the government, he might secure the conviction of the prisoner, and at the same time his own safety in the discharge of his duties in the prison? Testimony, which is given under such peculiar circumstances, must be taken with great caution by jurors in the trial of a case like this. Mr. Bean is too intelligent a man not to know the meaning of the words, in the oath he takes as a witness, "to tell the whole truth;" and his attempt to ex-

plain the reason, why he failed to testify at the former trial to the threat to which he now swears, will hardly extricate him from the equivocal position in which he stands. I submit, with great confidence, that you cannot give any great weight to his evidence.

But after all, there is another consideration, which I think puts at rest the whole case of the government, on the point of express malice. If you believe the evidence of the three witnesses who have testified to the threats, (as I submit you cannot,) yet it cannot be controverted or doubted, that the whole tenor and effect of the evidence in the case on both sides shows, that the prisoner entertained no ill will or even unkind feeling against the warden. If, under the provocation of some punishment, he had once or twice, as prisoners often do under like circumstances, indulged in threatening expressions against him, yet it is abundantly proved, that on many occasions, especially in reference to his sentence as a "second comer," he had spoken kindly, and even with gratitude, of him. I need only refer you to the testimony of Bean, the government witness, of Crowninshield, and Reed; to all of whom, at different times, he voluntarily uttered expressions of kindness and thankfulness to Mr. Lincoln, for having spoken well of him to the court, "better than he expected," and having thereby saved him from a long sentence. But this is not all. The threats, which the government attempt to prove, were uttered long previous to the act of homicide. We hear of nothing of the sort, either in look or words, at or about the time the act was committed. No expression of hatred, malice or revenge, escapes the prisoner's lips, or shows itself in his countenance, at the time the government would have you believe this terrible design was deliberately harbored in the mind of the prisoner, and he was maturing it to its completion. Think you, that this man, who was carrying out a long cherished intent, of which he had, as the government allege

by his previous threats given intimations, would, as the time for its fulfilment drew near, when his mind and heart must have been full of his malignant purpose, have shown no sign, and uttered no threat, even to a comrade, which would have betrayed his malice? And yet there is no such evidence offered to you here. If the government could have proved any immediate provocation, if they could have shown any act or look which could have been construed into a threat toward the warden, during a week or fortnight preceding the homicide, the case would have been far different. But as it stands before you on the evidence, it cannot be reasonably contended that any express malice is proved. And how was it after the act? Do you hear, then, of any expressions of gratified malice or gluttoned revenge? Oh, no; on the contrary, he speaks in terms of kindness and regard of his unfortunate victim; and when asked, if he had any fault to find with Mr. Lincoln, or any antipathy against him, he does not utter a word to indicate that any such feeling had ever touched his heart. You will remember that Mr. Fogg, Mr. Dwight, and Savary, all testify fully to this point. There is only one piece of testimony, which throws any doubt upon this part of the case. I now refer to the evidence of Warren B. Parker, who testified to some expressions of the prisoner, when he took him from the cell, a short time after the homicide, for the purpose of searching his person. "I have fixed the warden, and I will have a rope round my neck to-night." This, the learned counsel will contend, is positive proof that the act was done with malice prepense and aforethought. But, gentlemen, is it so? Does it mean anything more than a mere declaration of the prisoner that he had committed the act, and that he was to be hung for it that very night. I submit to you, that it cannot serve to sustain the case of the government on this point. It indicates no express malice. It is rather, as it seems to me, the expression of an insane man, who was con-

scious for the moment of the awful act he had committed, and who had some vague idea that punishment was to follow. I shall have occasion hereafter, when I come to consider the grounds of defence, to ask how the learned counsel for the government will reconcile this open declaration of the act by the prisoner, with the theory, that the prisoner feigned his insanity to cover up and conceal the act.

Thus, then, gentlemen, this part of the case for the government is disposed of. In the first place, we contend, that the witnesses, who testify to the threats, are unworthy of belief. In the second place, that the threats, if proved, are of common occurrence in the prison, and do not necessarily show express malice. And in the third place, that it is clearly and abundantly proved, that the prisoner, so far from cherishing ill-will and malice toward the warden, felt kindly toward him, and spoke in friendly terms of him, both before and after the homicide.

I think I am safe in asserting, that the government have failed to satisfy you on this most material part of their case, and that they must rely on other portions of the evidence to convince you of the guilt of the prisoner. I feel great joy in the assurance that there is nothing in the testimony which convicts the defendant of having so black a heart, as he must have possessed, to have committed this fatal act with deliberate and determined malice. I could not have stood up before twelve honest men, to defend a man, whom I believed capable of such a wicked and deadly intent. But I can, and I do claim for him at your hands, with the utmost confidence, upon the testimony before you, a full, entire, and unhesitating acquittance from the charge of express malice.

This preliminary question being settled, we come now, naturally and in order, to the real grounds of the defence. I have said before, that if the government had satisfied you that there was express malice, the case of the prisoner would be

at once at an end, because it would imply the existence, at the time of the homicide, of reason, sanity, and the power of directing and controlling the will. If the view I have submitted to you of the evidence be correct, there is no such express malice shown, and you are left to infer the ingredient of malice, which the law requires to constitute murder, from the act itself and the circumstances attending it. In other words, the case of the government stands only on implied malice. This implication, we say, is rebutted by the proof of the *insanity of the prisoner*.

I know, gentlemen of the jury, that there is in the public mind, a strong and wide-spread prejudice against insanity as a defence in criminal trials, and it has added greatly to the weight of responsibility, which I have felt so painfully in this case, that we have been compelled to struggle against the tide of public sentiment in order to gain at the outset a favorable hearing for the prisoner's defence. The learned counsel for the government, in opening his case, told you it was "a defence easily made," and held up to your view the consequences which might follow, if juries too readily listened to such defences in courts of justice. Such a caution was unnecessary. I have mistaken public sentiment, if juries in this state are found to be over-anxious to sustain them. It has been stated to you that this plea has been much abused, both in this country and in England. I was sorry to hear such an intimation coming from the learned counsel for the government. What have you to do with the decisions of juries in other courts? You are sworn to try this issue and this issue only. The defence of insanity is a legal defence. Books have been written upon it by learned jurists, and courts of justice throughout the civilized world admit it. You are to try it as you would try any other defence, without reference to its consequences, or to its abuse elsewhere, or even here. You are to administer law, not to make it or destroy it. And your duty requires

you to consider and weigh this defence as patiently, as cautiously, as considerately, as *humanely*, as any other which can be set up in our courts. But aside from this view, I deny the statement which is so often made, and which the learned counsel for the government repeated, that the plea of insanity is abused. When, and how, and where has it been abused? Point to the instance in New England, where a jury has returned a verdict of acquittal on the ground of insanity, that the subsequent history of the person acquitted has not shown to have been a righteous verdict. I have high authority for stating, that there is no such instance on record for the last fifty years in the judicial history of New England. But alas, the cases, which my associate cited to you in his learned and elaborate opening for the defence, must have satisfied you, that often, very often, the reverse has been true, and that many unfortunate victims have suffered punishments, whose insanity should have saved them from legal condemnation. I do not hesitate to say, that so far from being abused, or too often used to shelter criminals in this commonwealth, it has been too frequently slighted and disregarded in our courts. Dr. Walker, in his testimony in this very case, tells you, that since he has been physician of the state prison, there have been twenty prisoners sent there whose state of mind was such as to render them unfit subjects for punishment. This evidence, coming from a witness, whom you will not think much inclined to favor the plea of insanity, speaks volumes. It teaches us a solemn lesson, warning us to be vigilant in the discharge of our duty by bringing to our minds the errors of others, upon whom like responsibilities have devolved. It seems to me, that the defence of insanity, so far from being one which courts and juries should receive with hesitation and distrust, should, on the contrary, be regarded with indulgence and favor. The disease is one in its very nature mysterious and almost beyond the reach of human skill. No one can

surely anticipate the time, or manner, or cause, of its approach, or foretell with certainty the length of its continuance, or its probable result. It comes upon the intellect without a warning, and prostrates at a blow all the better faculties of our nature, poisoning the fountains of thought, unhinging the will, and making man the sport of caprice, and the slave of an ungovernable impulse. Unlike other diseases to which the human frame is subject, its symptoms and manifestations differ in almost every case. No certain or definite rules can be laid down by which its existence can be invariably and surely determined. And thus it happens, that it is often most difficult to prove by sufficient evidence in courts of justice the presence of this terrible malady. For this reason, I say, that it is your duty to lean in favor of this plea, rather than against it; to listen with careful consideration to the defence of this unfortunate man; not to shut your ears and close your eyes against it, because he stands charged with a heinous crime, or because it may happen, that insanity is sometimes used to screen the guilty. Is it not sad enough to be stricken down by such an awful calamity — to be marked, as it were, by the finger of God, for a fate more dreadful than death itself — without being denied the sympathies of one's fellow-men, or having to encounter their prejudices in a matter involving character and life? I call on you, then, to weigh with caution and with mercy the evidence for the defence: give to every slight circumstance full consideration: remember that insanity cannot be proved with the perfect certainty, with which a common occurrence could be shown to you; that you are to draw your conclusions from appearances, and the opinions of those skilled in such matters, and competent to enlighten you on a subject, beyond the reach of the experience or knowledge of men engaged in the ordinary pursuits of life; and that you are to keep your minds free and open to receive the evidence, and to weigh it in mercy: and thus I shall cheerfully and fearlessly submit the fate of the prisoner to your judgment.

The law applicable to this case has been so fully stated by my associate in his elaborate and learned opening argument, that it will only be necessary for me to recapitulate a few points, so ably stated by him. Before, however, I proceed to ask your attention to the precise legal positions upon which I shall rest the prisoner's case, I have one or two general remarks to make concerning the past and present state of the law, relating to the plea of insanity in criminal cases. The learned attorney for the government has gone far back into antiquity, and has cited from black-letter law books, definitions of insanity, which he contends are to be your guide in considering the prisoner's case. He has quoted the opinion of Coke and Lord Hale, and maintains that the doctrines laid down by those jurists are the true legal distinctions at the present day, and are authorities by which the court are to be governed in their instructions to you. But I apprehend that this is not strictly so. Insanity is by no means regarded in our day in the same light in which it was looked upon, a hundred, or even fifty years ago. The time was, when the insane man was viewed as though he were the object of divine vengeance, and was treated as an outcast and criminal. Within our own recollection, dungeons, cages and chains have been deemed the fit and proper appliances for this unfortunate class of our fellow-beings, for whose sufferings and calamities it was supposed there was no cure or end, except in death. But, thanks be to God, and to the progress of advancing science and enlightened philanthropy, a light has penetrated these dark receptacles, and all that kindness, skill, benevolence, and wealth can do, is now given to the relief and comfort and cure of the insane. We need not go beyond the limits of our own commonwealth for the proof of this assertion. The spacious and magnificent hospitals, which now open their doors to receive all those afflicted with the loss of reason, the poor as well as the rich, affording to them the

benefit of the highest medical skill, and of all those means which experience has shown to be for their relief and restoration, are noble monuments to the benevolence and charity of our community, and show the change, which has taken place in the public mind, in regard to the nature and treatment of insanity within the last twenty years. But the rules of law, in this state and elsewhere, have not kept pace with this change. It is so difficult to alter or modify a rule of law — our courts adhere so strictly to precedent and authority, that notwithstanding the great modification of the views of all medical men upon this subject, there is no corresponding change in the rules of law relating to it. For this reason the elementary books still adhere to the old definitions and distinctions, and we read and hear them now in the same words, as they were originally laid down a century or more ago. I make these remarks, lest you should be misled by hearing the oft-repeated rule, that the insane man must be “incapable of distinguishing between right and wrong in order to excuse a crime,” upon which the learned counsel for the government has insisted with so much emphasis. Although the rule is so laid down, yet you will find that in its application to the particular cases which are reported in the books, there has been a constantly progressive amelioration within the last forty years. The English reports are full of cases, where the defence of insanity has prevailed under the direction of their highest courts, in which a strict adherence on the part of the court to the old rule, would have been fatal to the success of the defence. Even in the opinion which the judges of England gave in the House of Lords, in June last, Lord Chief Justice Tindal, although adhering to the old formula of words, at the same time takes care to state, that it is difficult to lay down any abstract rule on the subject, applicable to all cases, but that each case must be decided in great measure upon the facts and circumstances peculiar to it,

under the direction of the court. I think, therefore, I can safely say, that in considering this case you may lay out of your mind the nice and metaphysical distinction, upon which the learned counsel for the commonwealth has so strenuously insisted, that you must be satisfied that the prisoner, at the time of committing the act, could not distinguish between right and wrong before you acquit him on the ground of insanity. It appears to me that the law, as applicable to this case, may be stated in a form more in accordance with recent authorities and cases, and less embarrassing to your mind. I shall contend, under the direction of the court, that the rule is this : If you are satisfied, that the prisoner, when he committed the homicide, was laboring under a delusion, which overpowered his will, and deprived him of self-control ; and that the act was connected with that delusion, he is entitled to an acquittal. In support of these positions, I shall cite a few authorities, which, I think, will fully sustain them.

In Chitty's Med. Jurisprudence, page 345, I find the law thus stated, — " The true criterion or test of insanity, (where there has not been any clearly demonstrated *frenzy* or *raving* madness,) is the absence or presence of what is termed *delusion* ; and that whenever an individual once conceives something extravagant to exist, which has no existence, and when he is incapable of being *reasoned* out of the absurd conception, then he is to be considered as under a *delusion*, and either an idiot or insane." So the same author says,* " Sir John Nichol has observed, that it may be difficult and perhaps dangerous to attempt to define what is the essence of insanity ; but that *delusion* has been generally laid down as essential ; that is, fancying things to exist which can

* Chitty Med. Jur. page 350.

have no existence, and which fancy, no proof or reasoning will remove." So Lord Erskine, in the trial cited by my associate,* lays it down in strong and emphatic language, that, "*delusion*, where there is no frenzy or raving madness, is the true character of insanity; and that the true doctrine of law is, *that the delusion and the act should be connected.*" The case of Hadfield,† which was detailed to you in the opening for the prisoner, and need not now be re-stated by me, is strongly in point in the present case. There, was no raving madness, no inability to act sanely on general subjects, but a delusion on a particular matter in the mind of the prisoner, which led him to commit the act for which he was tried. It was the first case in the English courts, in which the rigor of the old rules of law was relaxed, and a new era was commenced, more in conformity with the principles of humanity, and of advancing medical science. Roscoe, in his work on Criminal Evidence, page 778, says: "The defence of insanity is one involving great difficulties of various kinds, and the rules which have been laid down by the judges, with regard to the nature and degree of aberration, which will excuse a person from punishment, are by no means consistent with each other, or, as it would seem, with correct principle." And, on page 781, he adds, "The following observations of an eminent writer on the criminal law of Scotland, are applicable to the subject. Although a prisoner understands perfectly the distinction between right and wrong; yet, if he labors, as is generally the case, under an illusion or deception in his own particular case, and is thereby incapable of applying it correctly to his own conduct, he is in that state of mental aberration, which renders him not criminally an-

* See Chitty, Med. Jur. page 360. † See Roscoe's Crim. Ev. page 782.

swerable for his actions." So a recent writer,* in a work of great ability, after considering at much length the different legal tests on the subject of insanity, remarks, that, "There are no certain legal or medical rules, whereby homicidal mania may be detected. Each case must be determined by the circumstances attending it: and the true test of irresponsibility appears to be, if it could be practically applied, whether the individual, at the time of the commission of the crime, had or had not a sufficient power of control to govern his actions." And Beck, in his work on Medical Jurisprudence, a book of standard authority in our courts of justice, after stating the rules of law, especially referring to the distinction between right and wrong, says, that, "It is to be feared that cases may sometimes occur in which the dividing line between sanity and insanity is overleaped in the ardor to punish a foul homicide. The form of insanity which most commonly leads to the perpetration of this enormity, is one that assists in increasing the difficulty. It is that of melancholy, where the mind broods over a single idea, and that idea may be his own destruction, or the destruction of others." †

Some of the leading modern English cases, have been those of delusion only, where the prisoners have been perfectly sane on all subjects except the one in regard to which their delusion has existed; and in all these cases juries, under the direction of the courts, have acquitted the prisoners. Such was the case of *Rex v. Offord*, ‡ and the still more remarkable case of *Regina v. Oxford*, § both of which were cited to you by my associate in his opening. In the latter case, Chief Justice Denman, in his

*Taylor's Med. Jur. London, 1844, page 649.

†Beck's Med. Jur. Vol. 1, page 370.

‡5 Car. & P. 168. § 9 Car. & P. 525.

charge to the jury, stated to them the law in a clear, fair, impartial manner ; and I beg to call your special attention to his language, as stating the precise grounds upon which I am willing to put the case of the prisoner at the bar. He says: "The question is, whether the prisoner was laboring under that species of insanity, which satisfies you that he was quite unaware of the nature, character, and consequences of the act he was committing : or, in other words, whether he was under the influence of a diseased mind, and was really unconscious at the time he was committing the act, that it was a crime." ¹ And then, too, the case of McNaughten, which has been so often referred to, was one of a delusion, (co-existing in the mind of the prisoner, with sanity on other subjects, and an ability to transact business, and to attend to all the common duties of everyday life,) which led him to shoot a man down in open day in the streets of London. Now, after all these authorities and cases, it seems useless to be mystifying your minds in endeavoring to raise nice questions here, as to whether the prisoner, when he committed the act, could or could not distinguish between right and wrong. You cannot penetrate into the recesses of his mind. You are to judge from outward appearances and acts ; and this you can do with ease and satisfaction, if you will follow the lights of the authorities which I have cited, under the instructions of the court. Let me then repeat the rule which should guide you in considering this case. If you are satisfied that the prisoner, when he committed the homicide, was laboring under a delusion, which overpowered his will, and deprived him of self-control, and that the act was connected with that delusion, he is entitled to a verdict of acquittal.

¹ 9 Car. & P. 547.

Upon these cases and the rule I have deduced from them, I shall rest the defence of the prisoner. If upon the evidence I can satisfy your minds, that this case comes within the rule, I shall, under the direction of the court, claim his acquittal at your hands. You are to be satisfied, then, of two things : first, that a delusion existed in the mind of the prisoner ; and, second, that the act was connected with that delusion.

I shall not take up your time in arguing to you the question, whether the witnesses have proved, that prior to the commission of the homicide, and immediately subsequent to it, the prisoner appeared to be suffering under some great and overpowering mental delusion. The learned counsel for the government will not deny that there were real or feigned symptoms and manifestations of insanity by the prisoner, during the week of the homicide. Assuming for the moment that these appearances were the real consequences and results of genuine mental aberration, I call your attention to the form in which the insanity of the prisoner was manifested, and to its peculiar characteristics. The whole tenor of the evidence shows that, commencing on Monday night and continuing with increasing aggravations up to some period subsequent to the death of the warden, the prisoner was laboring under some powerful hallucination ; that he was at times in very great distress and apprehension ; that he declared that he heard the voices of his fellow prisoners, confined in distant parts of the prison, and also of some of the officers speaking to him, and threatening him with danger ; telling him that poisonous substances were mingled in his food ; that a fatal or dangerous game was playing upon him, which he could not long survive ; and that the warden was going to take him up to the old prison, shut him up and keep him there till he was carried out feet first ;

that he expressed his fears and apprehensions at various times to different persons, during the three days prior to the homicide, and particularly and frequently stated, that the warden was going to shut him up, and that if he did he should not live three days, he should be carried out feet first ; and other statements of a like kind. This, in a few words, describes the nature of the delusion, which appeared to have taken possession of the prisoner's mind. His predominant fear seemed to be, that he was to be shut up by the warden, and that the consequence would be that he should suffer instant death. If this was a real delusion, it was clearly connected with the act of homicide ; because he labored under the belief, that the warden was plotting against his life, and was about to kill him by shutting him up in the old prison. His delusion, if real, related to the warden. He was the object of his suspicions and fears, and upon him, following out the regular train of his insane imagination, he made the fatal attack, in order to protect himself from the danger which he believed was impending over him. If this be so, we may assume, as a fact, proved by the evidence, that if the delusion, to which the witnesses have testified, was real and actually existed in the mind of the prisoner, it related to the act and was connected with it, and brings the case, therefore, within the authorities, and the rule I have stated to you.

We now approach, gentlemen, the real question of difficulty in this case, upon the decision of which, as I apprehend, the fate of the prisoner will mainly depend. Was the delusion, which manifested itself in the prisoner prior and subsequent to the homicide, real or feigned ? To this part of the case I ask your attention, feeling that it involves the whole question of the guilt or innocence of the accused, and with a full conviction, that

an examination of the testimony will satisfy you that there can be no rational doubt as to the real insanity of the prisoner.

In the first place, I ask you to recollect the mode and time of its commencement. Gardiner, the watchman on duty on Monday night, tells you, he heard a great outcry, as of a man in distress, and on going to the place whence the noise proceeded, he found the prisoner in his cell without any clothes, standing near the door, trembling like a man who had waked up frightened from a horrid dream. That he then and there began to tell him of hearing voices, and went over the same story of his sufferings and fears, as subsequently characterized all his statements. This story has been so often repeated here, I shall not recapitulate it. Now I ask you, if you think it probable, that a man, who was feigning insanity, would select such a time and place for its commencement? When he was out of the way of observation, to be approached only by the watchmen on duty, through a grated door, and to be seen by the dim light of a lantern; this would hardly be the time to select to commence a fiction which was to answer his fatal purpose, and the truth of which he wished to impress upon others. The witness tells you he appeared frightened and trembling, like a man who had awaked from a horrid dream. Ah! gentlemen, it was not the "stuff" that dreams are made of" that had then possessed itself of the perturbed spirit of the unfortunate prisoner. It was a far more "perilous stuff." It was the first outbreak of that insanity, which, over-mastering the reason of the prisoner, held him in its grasp, and made him at once a victim and an executioner. Mark from this hour its progress; not instantly becoming violent, nor always possessing, to the full extent, the mind of the prisoner. On Tuesday, the day following

the first outbreak, you hear only of occasional symptoms and outbreaks, still continued during the following night, and appearing in more frequent exhibitions on Wednesday; till on Thursday, the day of the homicide, you find the prisoner entirely under its influence, in great excitement, with tears and prayers seeking for deliverance and protection from the imaginary evils which impended over him, and finally, under an insane impulse of self-defence, striking the fatal blows upon him whom he supposed to be the author of his danger. I say the whole course and progress of the malady, from the time and mode of its commencement, not all at once, violent or breaking out into frenzy, but still gaining more and more the mastery over the mind and will, until it prostrated all reason and self-control and drove the prisoner, under an insane and ungovernable impulse, to the commission of the act, show, that it was the natural and actual access of disease, which no man could have simulated. Take it from its first manifestation at midnight in his solitary cell, through all the details which you have heard on the stand, until the consummation of the tragedy, and the mind cannot resist the conviction, that the prisoner was the victim of a real, overwhelming, will-destroying delusion. Art can never equal nature; it may imitate it closely, but you can surely detect the imitation. The circumstances and events which marked the conduct of the prisoner, during the period referred to, are too frightfully real to have been the result of fiction. Consider them together, look over in your minds the conduct of the prisoner, and the circumstances surrounding him, during the three days and nights preceding the homicide, and ask yourselves, if it be possible to believe that the whole was the result of mere pretence.

In the second place, I ask your attention to the act

itself as indicating real insanity in the mind of the prisoner. In forming our judgments of the motives and purposes of mankind we must look at their acts, and form our estimate of them in the light of reason and common sense. Certainly, jurors can have no other safe standard to guide their judgments. Now it is often the case, that insanity is first manifested in the criminal act for which a man is arrested and tried. Sometimes the act is the only evidence of insanity.¹ The absence, too, of the ordinary motives, which might induce some criminals to commit crimes, is strong evidence to show that the mind must have acted under some insane impulse. I submit to you, that the act of the prisoner, was in itself, the act of a madman, and shows that he was insane when he committed it. Look for a moment at his situation. He was a prisoner, surrounded by bolts and bars and guards, with no hope of escape, but with the certainty of detection and punishment. He commits the act in open day, without concert with any one, in the presence of fifty witnesses. He selects a time and place where he was sure to be seen. He was not a convict for life, or even for a term of years. He was to be discharged in September, less than three months from the day when the homicide took place. Had revenge been his object, would he not have waited until after his discharge from the prison, and then have sought his time and place for vengeance with some prospect of escape? If he was cunning and shrewd enough to simulate this insanity for the purpose of committing the act, as the learned counsel for the government will try to persuade you he was, would he not rather have waited a month or two and sought his opportunity and his

¹ Taylor's Med. Jur. 645. *Regina v. Oxford*, 9 Car. & P. 537.

man with an equal cunning and shrewdness after his release? It is impossible to reconcile his conduct in this respect except upon the belief that he was insane. But this is not all. There was an entire absence of all motive. I challenge the learned counsel for the government to point out to you any immediately preceding cause for this act. If the insanity, according to the theory of the government, was simulated by the prisoner to enable him to perpetrate the act with impunity, we must seek for the motive of the act, prior to Monday night, when Gardiner first discovered the prisoner under the influence of a paroxysm in his cell. The motive for the murder must have been prior to the first manifestation of insanity, if the latter was to serve as the shelter against the punishment for the former. There is no fact in the case which goes to show any such motive. Rogers had not been punished prior to Monday. He had not even been censured. The last we hear of him, prior to that time, in connection with the warden, is from the witnesses who heard him express himself pleased with his sentence as a "second comer," and with the manner in which the warden had spoken of him to the court. I ask then for the motive which induced the prisoner to feign his insanity and commit the murder. I ask you, gentlemen, to judge of the conduct of the prisoner, as you would judge of other men's conduct. Search out a motive for the act. Seek, in the evidence, for some proof of a rational, natural, ordinary incentive, which operated on the mind of the prisoner, and impelled him to the commission of the act; and if you can find any such, I concede, then, his guilt is proved. But if I have not mistaken the testimony, this act, which would have required in a sane man a strong, plain, overpowering motive, sufficient to

control and crush all the better faculties of his nature, and engross his whole mind and soul in the execution of his dreadful purpose, stands alone in all its horror and enormity, without one particle of evidence, either by act or word, to show that the prisoner had any motive operating on his mind, to induce him to its commission. It is, in the language of the author whom I have before cited, one of those "dreadful motiveless murders, which characterize and distinguish the acts of the insane;"¹ and if there were no other evidence of the prisoner's insanity, than the entire absence of all motive for the act, I should claim his acquittal at your hands, with the utmost confidence. Whatever may be the result of this trial, I shall ever feel grateful that I am able to stand up before you, and on my conscience assert the belief, that the prisoner took the life of his victim without motive, and under the blind impulse of an insane will. I should have wept over the degradation and depravity of human nature, if I had been compelled to believe, that any man, however wicked or degraded, could have deliberately, and with a rational motive, committed such an awful crime.

In connection with this view of the case, and to satisfy you that the prisoner was actuated by no sane motive, but that the act was done without premeditation, and under some sudden impulse, I ask you to look for a moment at the circumstances attending the homicide. You will remember, that the evidence shows that the prisoner went to Bradley's work-bench, and took a shoe-knife, with which he inflicted the fatal wounds, and that the procuring of the knife, and striking of the blows were immediate, and almost simultaneous. If the prisoner had acted from a motive, and a pre-conceived intent, would he not have supplied himself with a weapon, which he would have kept in readiness for the

¹ Taylor, 640.

emergency, about his person, or within his reach? Would he have trusted to the doubtful chance of being able to go some distance across the shop, to the work-bench of another convict, in the presence of officers and prisoners, in order to secure the knife? He did not even seize the knife which was on his own bench, and within his reach, which he could have taken up without observation, and which, as you have seen from inspection was equally well, if not better, suited to his purpose. His own knife was pointed, and more certain to penetrate, than the one he took from Bradley's bench, which has a square blunt end. These may seem to you small circumstances, but they show, to my mind clearly, that the prisoner acted without forethought, and under a sudden impulse; that at the moment he saw the warden entering the shop, under the influence of his delusion, which the evidence shows to have been then at its crisis, and in full possession of his mind, he imagined the time for his imprisonment in the old prison, and his consequent death, had arrived; that impelled by a fear of his impending danger, and with a movement as sudden and irrepressible as the instinct of self-defence, he rushed upon the object of his fear, and averted his own death, by taking the life of the warden. How simple, how rational, how clear, is this explanation of the tragedy. Will you not believe its truth? Will you not rest satisfied with this merciful and consistent view of the prisoner's act, rather than endeavor to seek out and discover malice and design in his heart?

I pass now to another part of the testimony, to which I call your attention, as showing the real insanity of the prisoner. You will remember that several witnesses testified, that prior to the homicide, they had noticed the conduct and appearance of the prisoner, and had become convinced that he was not in his right mind. I need only refer you to the evidence of Sargent, Crowninshield, Braman, Gardiner, Savary and

Bradley, all of whom have testified that they thought Rogers insane two or three days previous to the fifteenth of June. But it is not this fact alone, which serves to prove conclusively the reality of the prisoner's insanity, and the conviction which the witnesses felt, that it was real and not feigned. If you will recall their testimony, you will find that Sargent, Crowninshield and Braman, especially the two former, not only believed the prisoner insane prior to the homicide, but that *they acted on that belief*. As early as Tuesday evening, Sargent told the warden, that "Rogers was not right," and asked what should be done with him, and within fifteen minutes of the time of the homicide, Crowninshield had gone in search of the warden, in order to persuade him to take immediate measures for the care and security of the prisoner, as being insane, and incapable of taking care of himself. You will also remember, that in consequence of Crowninshield's statements to the deputy warden, the latter met Mr. Lincoln as he was in the act of passing from the chapel into the workshops, and stated to him that it was believed that Rogers was crazy, and asked him what should be done with him. And here a second time, the warden, as if bent on his own destruction, or led on by a destiny which he could not resist or control, treats the suggestion with indifference, and without asking a question, or making any examination in order to ascertain the truth of the statements, he pronounces it "all a sham," and passes on. The fatal consequences we know. A few steps more and the knife of the insane convict had penetrated his heart. Oh! that this unfortunate victim had taken counsel of his fears and not of his experience! He would then have investigated the facts and ascertained the truth, instead of prejudging the case, and pronouncing it a fiction, merely because other convicts had feigned insanity. He would have thus saved his own life and spared his family, the prisoner, and the whole community, the pain and

horror of the awful consequences which ensued. But by the divinity that shapes our ends it was otherwise ordered, and it is for us to submit in the confident belief, that all things are ordered for the best by a wise and beneficent Providence. Upon this state of the evidence, then, you have the fact clearly established that several persons, officers as well as convicts, believed in the insanity of the prisoner prior to the homicidal act. I submit that this testimony must have great weight upon your minds. Here are impartial witnesses, officers of the prison, and intelligent and respectable men, from their position and their relations to the prisoner, seeing him more frequently, and observing him more closely than any other persons, who make up their minds, judging by his conduct and appearance, that he was insane. They so believe, they so act. Will you trust in the judgments of these men, formed from observation, or will you adopt the theories and conjectures of others who saw less of the prisoner, and who formed no opinion as to his sanity until after the homicide? It adds immensely to the force and weight of this testimony, that these witnesses formed their opinions and acted upon them before the fatal act. It proves that they were real opinions; that they have not been got up to suit the case, or formed after the homicide in order to account for the commission of the deed, or for the sake of screening the accused. We come here with no fictitious case. We show you by credible and impartial witnesses its awful reality and their belief in its truth before there was any case to be made out. Will you disregard such evidence? Will you set up your own judgments as to the insanity of the prisoner above those of witnesses who saw him and believed in it, when there was no motive or reason for such belief but its actual existence? Here then is an end of the case, if you believe in the testimony of these witnesses. What evidence do the government produce here to impeach it? None. They prove nothing by

any witness who saw the prisoner, prior to the act, that invalidates this testimony. No man is brought here among all those who surrounded the prisoner at the time, and who saw and observed him, to controvert this great and important part of the defence. It stands unimpeached and unimpeachable. Not one man, (with the exception of Dr. Walker, and of his evidence I shall speak hereafter,) who saw the prisoner before the fatal Thursday, has been brought forward to prove a fact or state an opinion, showing that the prisoner was feigning insanity. The evidence is all in favor of the prisoner on this point, and I call on you, as you love mercy and regard the sanctity of the oath of God, that is upon you, to weigh this testimony, and to give the prisoner the full benefit of it in coming to your verdict. Nor is it to be forgotten by you in considering this part of the defence, that in the annals of medical jurisprudence, there is no case on record of simulation of insanity, prior to the act, for the purpose of avoiding punishment. Among all the cases of feigned insanity with which the books are filled, there is not one where the supposed insanity preceded the criminal act. It has often been simulated to cover up crime after its commission, but never used in anticipation to conceal or disguise a criminal intent.¹ This is a remarkable feature in the present case, and tends strongly to show the reality of the prisoner's insanity. It will at least serve to satisfy your minds, that we come here with no common case ; that we have not asked your attention to a merely formal defence for the purpose of discharging ourselves of our duty, but that we stand here to show you strong, substantial and convincing reasons for the acquittal of the prisoner.

But, gentlemen, perhaps after all the most conclusive proof of the prisoner's insanity is to be found in some of the cir-

¹ Taylor, Med. Jurisp 630.

cumstances to which the witnesses have testified, in regard to the conduct of the prisoner, immediately before and after the fatal day. I cannot, without abusing your patience, re-state all the particulars which seem to me to be strong indications, that the prisoner was struggling with a delusion which he could not conquer, and which finally overwhelmed his reason, and overpowered his will. I shall leave it for you to recall the testimony to your own minds, and to consider it as bearing on this part of the case. I cannot omit, however, alluding to one or two circumstances which show the reality of the delusion, and which are entirely inconsistent with the theory that the insanity was feigned. Several of the witnesses have testified that the prisoner, when remonstrated with and told that the sounds he heard and the sights he saw, were unreal, and that he was laboring under delusion, did not deny that it might be so ; but on the contrary, that he would for the moment seem to realize and admit that it was all a mere fancy of his own. You remember that when Patterson told him that no one had spoken to him, and that there were no such voices as he alleged to have heard, he replied, "can it be all my imagination?" And on several other occasions, he made replies of a like import. Now, it appears to me that a man who was playing a part, by simulating insanity, and trying to impress others with a belief that he was insane, would be unwilling to admit for a moment that his supposed delusion was unreal. He would naturally insist upon its truth. He would strive to make others think that he fully believed in its reality. He would be the last to express a doubt of that which he was using every effort to convince others actually existed. So far from yielding to the doubts of others on the subject, he would naturally resist, and endeavor to counteract them, by expressing his own belief in the reality of the delusion. But such was not the conduct of the prisoner. When told that he was

deceived, and that there was no foundation for his fancies and fears, he yields for a moment to the assurance. He pauses and doubts. His mind, for an instant, is relieved, and he seems to realize that all has been a delusion. The reason for a moment struggles to regain its mastery, and is again overpowered. How natural is all this, and how unlike simulation.

Then, too, you will remember the fact, that on several occasions he related to some of his brother convicts the whole of the series of pains and annoyances which he had suffered, while laboring under his delusion. To Savary and Bradley, especially to the latter, on Wednesday morning, he recounted what had taken place, the voices he had heard, and the threats which had been made against him, and sought for relief from the poison which he supposed was working in his frame. All this was done apart, no one being present but the prisoner and the convict to whom he was speaking. If the purpose of the prisoner was to simulate insanity, in order to protect himself from the punishment of his contemplated crime, why did he thus communicate with his fellow-prisoners? His statements to them would be of no avail. He knew that they could not be witnesses in courts of justice, without an executive pardon, and therefore it was useless for him to practise his imposition upon them. How then can you reconcile this with the theory of the learned counsel for the government? Does it not show the reality of his delusion? He takes his fellow prisoners apart, and tells them of his sufferings, in order that he may receive their sympathy and advice. It could not have been done for the purpose of deception, because he must have known that, in all probability, they could not aid him by their testimony. Then, too, consider for a moment, his visit to the physician on Thursday morning, the day of the homicide. Why, if he was playing this game of deception, did he voluntarily put him-

self under the scrutiny of so keen and penetrating a man as Dr. Walker? Would he not rather have avoided him? He knew well, by his own experience, that the physician was not much inclined to favor any complaint from him. The hospital record will show you that he had been, again and again turned away by Dr. Walker from the hospital, without treatment. He could not surely expect to gain anything by an application to him. He goes there in the faint hope of obtaining relief. He had suffered during the whole night, and in the extremity of his agony, he seeks for medical aid. It seems to me most plain, that he would not have thus subjected himself to the observation and examination of the physician, if he had been conscious of trickery and deceit. He must have known that they would not avail him, in the presence of Dr. Walker, and it was only adding to the chances of his detection to expose himself to his scrutiny. I cannot omit to call your attention, in this connection, to his appearance and mode of approach, when he went up to the hospital on that morning. Dr. Walker, in his evidence, stated that he drew the inference, that Rogers was attempting to deceive him, from his manner when he came up towards him; that he walked with his ordinary gait, and that there was nothing unusual in his appearance, until in reply to his question as to what was the matter with him, he put his hands to his head in great excitement, and said he was in great pain there. These constitute the facts upon which Dr. Walker came to the conclusion that he was endeavoring to practise a deception upon him. But to my mind, and I think to yours, they are the most convincing proofs that he was actually suffering under the delusion of which he had complained. If his purpose had been to impose upon Dr. Walker, he would have come toward him not in his ordinary manner, but so as to attract attention, and prepare him for some unusual development. He would have exhibited some

signs of violence or frenzy ; he would have over-acted his part, like all other men who have feigned insanity. It was only when he spoke of the pain and suffering in his head, that he betrayed excitement, or even used a gesture ; and then he did not go into a detail of his insane imaginations, but only stated he had a pain in his head, and could not govern his mind. All this, I submit, was the natural, ordinary, proper conduct of an individual, situated as the prisoner then was. It indicates the reality of the existence of the delusion in his mind, and satisfies me that it was no fiction.

But further, if the prisoner's motive, as the learned counsel for the government will contend, in feigning insanity, was to kill the warden, and screen himself from punishment, why did he go to the hospital on the morning of that day ? Why did he seek for relief at all ? If the physician had thought proper, upon examination, to put him on the sick list, he would have remained in the hospital, where he could not have reached the warden, and where there were no means which he could use to accomplish his purpose. If he at that time harbored the intent to kill the warden, and had been simulating insanity to secure impunity, he would have sought to keep himself where he could most easily approach the warden, and most readily secure his weapon. He voluntarily went to the hospital, where he would not meet the warden, and applied for admission, on the morning of the day when the homicide was committed ; he went there in the ordinary mode and for a proper purpose, and his deportment while there was neither irregular or violent. Can you believe that he did all this and at the same time cherished in his heart the deadly intent which he so fatally executed on that day ? It cannot be ; he took precisely the course which he would not have taken if such had been his object ; and I challenge the learned counsel for the government to reconcile this por-

tion of the prisoner's conduct with the theory of his feigned insanity.

The last circumstance to which I wish to call your attention relates to a feature in this case which, of itself alone, is convincing proof, to my mind, of the actual insanity of the prisoner. I refer to his calmness after the homicide and the speedy disappearance of all symptoms of mental alienation. I know the attorney for the commonwealth will urge upon you this very fact as indicating the truth of his theory. He will ask you if it be possible to believe, that an insanity, so violent and overpowering as to cause the prisoner under its influence to take human life in such a barbarous manner, could pass away in a few hours or days and leave him as calm and collected as ever? There would be some plausibility and force in this argument, if it did not involve an inconsistency and absurdity which the ingenuity of the learned counsel cannot reason away or wink out of sight. If the motive of the prisoner was deception, and he was playing a deep game in order to screen himself from punishment; he would not surely have abandoned the attempt at the very time when it was most important for his security that he should continue it. He had committed the act; he had at once become an object of attention and scrutiny; the time had come, if ever, when he must avail himself of the opinions and observations of those who saw him, in order to establish the belief that he was insane, and thus save himself from the punishment of his crime. Now what was the conduct of the prisoner? For two or three days subsequent to the homicide, he appears wild, incoherent and restless, still recounting his sufferings and reiterating the story of his delusions. Soon, however, at intervals, he begins to appear more calm and natural, speaks of his delusions as if he was referring to some awful reality that had passed away, and gradually regains his reason and self-control. From that time to the present hour he has

shown no outward signs of mental disturbance. Now my view of this part of the evidence is, that if the prisoner was feigning insanity at the time when he committed the act, he would have continued that fiction to the present hour. He would not stand at that bar, as you now see him, calm and rational. He would not have remained in his cell at the jail quiet and peaceful. He would have followed in the track of all others who have endeavored to use insanity as a protection from punishment. You would have had witnesses here by scores to prove his strange conduct and violence and threats during the whole period, from the commission of the act to the hour of trial. You would have seen him before you at the bar, with wild and distracted looks, endeavoring to enlist your sympathies in his behalf, and to convince you of the reality of his insanity by the evidence of your own eyes. But not so with the prisoner; he has made no such attempt. I should have trembled for his safety, if we had come before you with such a case. We show you no overacted or extravagant conduct or appearances. We rely on the facts as they are. We prove to you the delusion of the prisoner; its rise, progress and termination. We admit that it ceased within a few days after the homicide, and that there has been no return of the symptoms; and upon this evidence, we say we have proved our defence. I thank the learned counsel for the government for putting into the case the testimony of the officers of the jail, as to the quiet and rational conduct of the prisoner since he has been there confined. What better evidence could you have of the truth of our defence? If the prisoner feigned insanity in the state prison, would he not have continued to feign it while in jail? If he could deceive the officers of the prison, could he not also deceive those at the jail? Would not their evidence have availed him here before you to make out his defence, as well as that of the officers of the prison, and does not the fact, that he

has shown no signs of delusion or insanity since the first few days after the commission of the homicide, satisfy you that he has been playing no game of deceit, but that his defence is substantial and true. I submit to you, with the fullest confidence, that this calmness of the prisoner, this absence of all attempt to prolong the symptoms of delusion, his apparent restoration to reason, and his continued quiet and peaceful conduct during the interval since the commission of the act, all show the reality of the prisoner's insanity, and wholly destroy the theory of the learned counsel for the government, that it was simulated by the prisoner to protect himself from punishment.

But there are some parts of the evidence which confirm, beyond all doubt, the truth of our defence. I have already cited to you from works on medical jurisprudence some of the symptoms which frequently accompany mental disease. Among these, two of the most common attendant signs are sleeplessness and a rapid pulse, the latter especially in recent cases.¹ Now the evidence shows clearly that for several nights, both before and after the homicide, the prisoner was awake at almost all hours of the night, and that he constantly complained of a want of sleep. It was in the night that he suffered most from his delusions, and made the outcries to which the witnesses have testified. He was always found by the officers, and others who went to him, awake and out of his bed, and in a state of great excitement, and, from the whole tenor of the evidence, it is clear that from Monday night, during the whole of the week, he scarcely slept at all. You have then here a symptom of insanity almost infallible, and which, as the books and the medical witnesses tell you, always accompanies mental disturbance, strongly manifested in the prisoner. It is a symptom, too, most difficult to feign. The

¹ Beck's Med. Jurisp. 352.

prisoner could not have known it to be a necessary accompaniment of insanity. He would have taken his ordinary rest, if he could have obtained it. If his purpose was to feign insanity, the day would have answered his purpose, and at night he would have sought his natural repose. Nature, too, would have asserted her right, and he could not have resisted the approach of sleep for so long a time, if his mind had been at rest. How, then, can you reconcile this fact with any theory but that of his real insanity? We have no evidence of the condition of the prisoner's pulse, until after the homicide. It is much to be lamented that no proper medical examination was made of him previous to the act. If on the morning of the fifteenth of June, when he went to the hospital and saw Dr. Walker, he had been fully examined, we could have compared his previous condition with that which was subsequently found by Dr. Bell, and thus have arrived at more certain and safer conclusions. But, as it is, we must judge of his bodily condition and symptoms by the evidence before us. Dr. Bell saw him on Saturday, about thirty-six hours after the death of the warden, and then found his pulse about 100, and from that time, for a fortnight or more, during repeated visits, his pulse, with one exception, was found to be over 100, and once as high as 120. Now, gentlemen, whatever else the ingenuity of man may do, he cannot control the beating of his heart. He cannot feign its pulsations. He cannot regulate the courses of his blood. He cannot, at his bidding, hasten or retard its flow. Too often, indeed, is he the "puppet of the spring of the capricious blood," but he can never restrain it or subject it to his will. The condition of the prisoner's pulse, as stated by Dr. Bell, is conclusive proof that he was suffering under some mental or bodily disease, and when connected with the other symptoms which had manifested themselves during the week previous, solves the mystery of this whole case. In this there can have been no fiction. Amid the difficulties and

doubts which may hang over other parts of this case, to perplex your minds and embarrass your judgments, you have here a clue to guide you in your conclusions, and to enable you to come to a result, alike consistent with humanity and truth.

And now let me call your attention to the peculiar nature of the insanity under which the prisoner was suffering. It appears by the evidence to have been a delusion, accompanied by the hearing of "false voices," and at times with a derangement of the senses of taste and smell. This form of insanity, as all the medical men have testified, is one, which, within their own experience, they have never known counterfeited, nor is there any instance on record in the books of a simulation of this peculiar kind of delusion. It is, too, of rare occurrence, but little known, except among those familiar with mental diseases, and from its nature and peculiarities most difficult, if not impossible to be feigned, even by those who know its characteristics, so as to escape detection. And yet you are called upon by the learned counsel for the government to say, by your verdict, that the prisoner at the bar has had the skill and ingenuity to simulate this form of delusion so successfully, as to deceive all those about him, and even a man of the experience and knowledge of Dr. Bell. Can it be that a man, who has passed the greater portion of his mature life in the confinement of a penitentiary, who, according to the statement of the learned counsel for the government, was brought up in ignorance, and can neither read nor write, could counterfeit this form of insanity, and so successfully imitate its remarkable and extraordinary symptoms, as to baffle the scrutiny of the most skilful and practised observers, who were in search of some signs of his deception and imposture? Can you believe that this ignorant prisoner could all at once conceive and counterfeit this delusion, in all its nice and delicate peculiarities, with a perfect consistency and without be-

traying its falsity in the slightest degree? And yet you must believe all this, before you can set aside the defence which we urge here in behalf of the prisoner. This case would have presented itself to you in a far different aspect, if we had shown you the common and ordinary form of insanity, with its violence and raving madness, so well known and so easily imitated, in excuse for this defendant: but it stands before you now without a parallel or a precedent. You are to say whether this prisoner has outstripped all former criminals on record, both in the enormity of his crime and in the cunning, audacity, and skill with which it was perpetrated; or whether he has been the victim of a delusion, which forced him to the act, and which is to exempt him from its consequences. I have no fears in submitting the prisoner's case to your judgment upon this issue.

To all these circumstances there is yet another fact to be added, confirmatory of the reality of the prisoner's delusion. Dr. Walker stated, in the close of his evidence, that he knew the prisoner was an onanist; and all the other medical men have told you that this habit of self-pollution is a fruitful cause of insanity, and frequently of this peculiar kind of mental disease. Indeed, no one could have looked over the records of our hospitals, and been ignorant of this fact. Here, then, from a witness for the government, you have the cause of the prisoner's delusion. In this soul-destroying and degrading habit, which pervades so extensively our prisons, you find the origin of his malady. What an awful illustration is this of the curse pronounced by the Almighty upon him who shall thus pollute and dishonor his nature! But in God's hands, and not in ours, is the right and the power to punish such transgressions. "Vengeance is mine: I will repay, saith the Lord."

In addition to the facts and circumstances connected with the conduct of the prisoner, at and about the time of the ho-

micide, which have been shown here to satisfy you of the unsoundness of his mind, there is another part of the testimony to which I must briefly allude, as being a strong confirmation of the grounds of our defence. I now refer to the evidence given by the father and other relatives of the prisoner concerning his bodily and mental condition, and that of several of his family, and also of his strange and irregular conduct at certain periods of his life. We prove to you that the prisoner was a weakly child, subject to fits in infancy; that one of his brothers was a *non compos*, disposed to violence and mischief; that his relatives, on his father's and mother's side, have been subject to insanity; and that the prisoner himself, before his commitment to prison, often exhibited signs of restlessness and excitement, accompanied by sleeplessness and other symptoms of derangement, which attracted the notice of those about him. It is a well established fact, laid down in all medico-juridical works,¹ and testified to here by all the medical men on the stand, that insanity is transmitted often from generation to generation, and that its existence in one portion of a family frequently indicates a predisposition to it in others of the same family. We offer this evidence to show that the prisoner was constitutionally disposed to insanity, and that his delusion may, in connection with other causes, have arisen from an hereditary inclination to the disease. We offer it to satisfy your minds, that it will be more safe, more humane, more just, more in accordance with the evidence, for you to acquit the prisoner, even if it be on this ground alone, than it would be to convict him on the unsupported theory of the learned counsel for the government, that his insanity was a mere fiction.

But, gentlemen of the jury, passing over without comment all other parts of the case, I come now to dwell for a moment

¹ Beck's Med. Jurisp. 350.

on the only remaining portion of the testimony to which I shall specially ask your attention. I refer, of course, to the evidence of the medical witnesses. The wise and humane provision of the law, by which the evidence of scientific men is allowed to enlighten and guide jurors in their investigations, is beautifully illustrated in the case before you. * You are not compelled to seek out the truth in darkness and uncertainty, but the light of science comes in to direct and aid you. It is most fortunate for the prisoner, for you, for us all, that Dr. Bell was called to visit the prisoner so soon after the homicide. His testimony is of inestimable value. He saw the prisoner frequently, and examined him critically. He visited him, as he tells you, believing that he was simulating insanity. He applied to him the severe scrutiny of his own great skill and abundant experience, and all the tests within his knowledge, to detect the deception. He comes here upon the stand, and testifies before you, in language which I will not weaken or impair by repeating, the conclusions to which his investigations brought him, and the reasons upon which they were founded. He tells you that, in his opinion, the prisoner was insane at the time of the homicide. And Drs. Woodward and Ray, who have attended this whole trial, and heard the evidence, confirm, upon their oaths, this opinion. I shall not comment upon the testimony of these witnesses. I shall not recapitulate their statements. I am sure they sunk deep into your minds, and that you need no repetition of them to impress them on your recollections. I may say with safety that in no state or country, can witnesses be found more skilled, more experienced, more learned in this interesting branch of medical jurisprudence, than the three medical men who have testified in behalf of the prisoner. They have given you their opinions, without hesitation or qualification, and it is your high and solemn duty to decide how far they shall influence your verdict. I do not ask you to surrender to

them your own judgments. Such is not the duty of jurors. They are to form their own opinions upon the evidence before them, independently and without undue influence. All I ask is, that you should give to this testimony its full weight. Do not be led to distrust or reject it, because you may hear the learned counsel for the government call it the evidence of mad doctors, or other hard names. It is legal evidence ; it is given under oath ; and you are to believe and act upon it, unless it is impeached or contradicted. I put it to you, then, that you are to be satisfied by the evidence, that these medical men are all mistaken, and that their opinions are not supported by the facts, or you must acquit the prisoner.

And what testimony is brought here by the government to control or impair the credit you are to give to these medical witnesses ? If any such evidence could have been obtained, do you think that the indefatigable and industrious attorney for the commonwealth would have failed to have had them here ? You have already seen that he has canvassed the state's prison for his witnesses, and has even gone to the house of correction to procure evidence to sustain his cause. With all the power of the government at his control to seek out and procure materials for his case, think you he would have failed to support it in this essential part, if he could have found witnesses suited to his purpose ? He has the same right as we have, to put physicians of skill and experience on that stand to contradict our testimony, and to give their opinions as to the insanity of the prisoner. Why has he not done it ? I submit to you, that the reason is, he could not find a medical man who would so testify. No man would have the hardihood to appear before you to give such evidence. I submit to you, therefore, that this part of our case is uncontradicted, and that it is not possible to obtain evidence by which to assail it. But I suppose the learned counsel will contend that you are to consider the testimony

of Dr. Walker as contradicting that of Dr. Bell, and in some measure as controlling that of the other medical witnesses. He cannot, I think, use it for the latter purpose, because he has not ventured to call him to the stand and ask him the question which the law requires him to ask, and which we have put to the medical witnesses for the defence. He cannot, therefore, avail himself of Dr. Walker's evidence to attack the opinions given by Drs. Woodward, Ray and Bell, and which they have formed by hearing the whole evidence in the case. But Dr. Walker has expressed his opinion as to the sanity of the prisoner derived from his interview with him at the hospital on the morning of the homicide, which conflicts directly with that of Dr. Bell, as formed from his observations of the prisoner subsequent to the fifteenth of June. The learned counsel will doubtless contend, as he has done before, that the opinion of Dr. Walker is better entitled to your confidence than that of Dr. Bell. I am willing to put the prisoner's case upon this issue. I would gladly avoid the necessity which compels me to state my views of Dr. Walker's position in the present case; but I should be wanting in my duty to the prisoner if I hesitated for a moment to speak freely and fearlessly on this portion of the evidence against him. I take the ground that the opinion of Dr. Walker as to the sanity of Rogers on the morning of the 15th of June, is entitled to no confidence whatever. Recall to your minds his testimony as to what took place in the hospital on that morning, and ask yourselves whether he took any proper measures to ascertain the mental or even bodily condition of the prisoner. He saw him but a few moments. He entered into no examination of his symptoms: he made no inquiry of others as to the conduct or appearance of the prisoner; he did not ask whether he had passed sleepless nights; he did not even deign to feel his pulse or look at his tongue. He coldly tells him, "I understand this. Do your part

toward receiving kind treatment and you will receive it," and thus dismisses him without examination and with expressions of reproof and censure instead of words of kindness and comfort. For my own part, I cannot conceive of anything better calculated to lacerate the feelings and excite to the highest pitch the already distracted mind of the prisoner, than such a reception by the physician of the prison. Can you wonder that he then abandoned himself in despair to the horrors of his delusion, and gave himself up to be its unresisting victim? Upon this state of facts I think I am safe in saying, that Dr. Walker did not perform his duty, and that you cannot rely on his opinion. Compare his treatment of the prisoner and the examination he made of the case, with the rules laid down for the guidance of medical men in such cases. In Beck's Medical Jurisprudence, a work of the highest authority, I find the following statement of the duty of a physician in such cases. "It is his duty, and should be his privilege, to spend several days in the examination of a lunatic, before he pronounces a decided opinion. If this be allowed to him, and also if he be enabled to obtain a complete history of the antecedent circumstances, much may be effected towards forming a correct opinion."¹ And then follows a catalogue of thirteen different tests, which are to be applied in order to ascertain the true condition of a patient, nine of which would have been applicable to the case of the prisoner. Take this as your standard, (and you cannot find a better,) and you will be able to judge how far Dr. Walker performed his duty in the present case, and whether you are to give greater credit to his evidence or that of Dr. Bell. The truth is, and it cannot be disguised, that Dr. Walker made no examination of the prisoner whatever. He was prejudiced against him, and supposed him to be re-

¹ Beck's Med. Jurisp. 350, 351.

fractory and ill-tempered. He had so regarded him for a long time, as is manifest by an inspection of the hospital record, by which you will see, that from February to June, 1843, he made no less than ten unsuccessful applications at the hospital, and was sent away by Dr. Walker without treatment. Under these circumstances, gentlemen of the jury, the position of Dr. Walker is an unfortunate one. On him, in some measure, as it seems to me, rests the responsibility of the sad consequences which ensued on the last day he sent the prisoner away from him without examination. He does not stand before you in this matter an impartial and unprejudiced witness. I repeat that I have stated this view of Dr. Walker's evidence with great reluctance. I know his eminence in his profession, and I doubt neither his ability nor his will to discharge his duties skilfully and faithfully, but I submit that in this case he made a sad mistake, and is not entitled to your confidence.

I should do great injustice to my own feelings if, before closing my remarks upon the evidence, I did not allude to the testimony of the Rev. Mr. Dwight, and to the course which he has adopted relative to this case. I do this, because at the former trial, his conduct and motives were severely and as I thought, unjustly attacked by the learned counsel for the government in his closing argument on that occasion. I will not detain you by dwelling on the particulars of Mr. Dwight's evidence. I will only ask you to consider it and give to it such weight as you think it entitled. You cannot doubt his sincerity or the truth of his statements, and many of them are of great importance and strongly confirm other parts of the evidence for the defence. But I must take occasion to say, that any imputation upon his motives is unjustifiable and without cause. What wrong motive could he have had? The head and front of his offending seems to have been, that he went to Dr. Bell and solicited him to see

the prisoner. He was anxious to ascertain the truth. He did not wish the innocent man to suffer nor the guilty man to escape ; and he therefore sought for such aid as would best enable him to attain these objects. If it was a fault in Mr. Dwight that he caused the light of science to penetrate the dark cell in which the prisoner was confined ; that he addressed to him words of kindness and joined with him in prayer to God, then he deserves censure and reproach at the hands of the learned counsel for the government. For my own part I would rather have the consciousness of duty well performed, which he has at this hour, than all the wealth or honor which the world can bestow.

In determining as to the insanity of the prisoner, I must ask you to consider the question distinct and separate from the crime. You will thus be able to come to a more correct decision upon the real matter before you. It is natural that you should feel a horror for such a crime, and a strong desire that it should be punished. But you are to take care, that in your eagerness to punish the homicide, you do not overleap the rules of law and of evidence. You are bound to determine the question of the prisoner's insanity in the same manner as if you were trying the validity of a will or any civil cause. You are to require no greater amount of evidence in this case than in any other, and if it is sufficient to satisfy your minds that he was insane, you are to render your verdict of acquittal regardless of consequences.

The learned counsel for the government, in endeavoring to convince you that the prisoner was simulating insanity at the time of the homicide, in order to escape punishment, seems to have overlooked an inconsistency in which his theory necessarily involves him and his case. He has already, in his opening, stated to you that the prisoner showed his malice and deliberate purpose, by the words uttered by

him, at the moment of the homicide, to which Jaquith has testified, and also by the expression to Warren B. Parker, immediately after the act, that "he had fixed the warden." Now if the prisoner were cunning and shrewd and cautious enough to feign insanity before hand, in order to effect his purpose, and escape punishment, and to simulate it so successfully as to deceive the most intelligent and skilful persons about him, would he have used expressions which would afford the strongest proof of his sanity? How can you reconcile his deliberate avowal of the act as one premeditated, and his open declaration that he had committed it, with the theory of his simulation of insanity? He had, the learned counsel says, pretended to be insane, and at the same time uttered language, which effectually exposed his pretence. If I am not mistaken, here is an inconsistency utterly irreconcilable and beyond the reach of explanation, except upon the ground that he was actually insane.

There were other points in the evidence, which I had intended to notice, but which I pass over in silence, having already exhausted my strength, and wearied out your patience. I feel that I have discharged my duty imperfectly, and that the prisoner's fate must, after all, mainly depend upon you. To your hands I cheerfully submit his cause. He stands at that bar now with no other defence than is to be found in the justice of his case, and in the humanity, intelligence, and candor of a jury of his country, aided by the instructions of an impartial and learned court. You are about to discharge the most solemn duty which can fall to the lot of a citizen, in our republic; nay, more, the most serious and responsible task which can rest upon members of a Christian community, is now devolved upon you. Feel this solemn responsibility. Upon your consciences, and your oaths, try the prisoner; and may God grant that

the result of your deliberations shall be such as to vindicate the majesty of eternal truth, and uphold the sacred cause of justice.

Mr. BIGELOW concluded at thirty-five minutes past five o'clock, P. M., and thereupon Mr. PARKER commenced the closing argument for the commonwealth. He spoke substantially as follows :

GENTLEMEN OF THE JURY — It now devolves on me to address you in behalf of the commonwealth in the close of this important cause, of such vast importance to the prisoner, and no less so to the community in which we live.

If his fate alone was involved in it, it should require of you the most careful examination for *his* sake ; it would be but the duty you owe to him, to proceed with the greatest care. But there is a duty, also, you owe to your fellow-citizens, to the public, to yourselves, and to God. A great and atrocious homicide has been committed ; a highly valued and respectable citizen, at the head of one of the most important institutions of the commonwealth, has been, without a moment's warning, stricken down and cut off in the midst of his usefulness ; his widow and orphans at once deprived of their protector and friend, and society of one of its best members ; and he, whose head devised that cruel outrage, and whose hand is stained with that innocent blood, is confessedly before you for judgment. What then is your duty to your country and to mankind, to yourselves and to heaven, but to hold the perpetrator of so fatal a deed to the strictest proof of his alleged excuse or justification ? For the safety of other men, for the protection of all other officers exposed to the dangerous assaults of wicked offenders, you are to see that such an assassin shall not go unpunished, if his defence be not clearly made out beyond a reasonable doubt. This great

question it is your duty to the prisoner and to the commonwealth to decide carefully and justly.

It was with regret I heard the junior counsel close his very elaborate speech to you, by beseeching you to be merciful, as you might wish to find mercy. I have considered such appeals as attempts, (inconsiderate, and perhaps therefore pardonable,) upon the personal honor and integrity of jurors who are under oath to speak the truth according to the evidence — as endeavors to lead them into a temptation to depart from the testimony, and give way to compassion. We are not now in the temple of Mercy, but of Justice, and there is no good reason to suppose that Heaven will ever be merciful to those who violate their oaths, their conscience, and their public duty by a misplaced and morbid sympathy for a prisoner, after a deed of such atrocity, avowedly perpetrated by him. There are cases where mercy to culprits is cruelty to mankind. But if sympathy is to sway us on this interesting occasion, let us not wholly forget the victim in his untimely grave, his bereaved wife, his orphan children, his afflicted brothers and relatives; let us not entirely forget those of our fellow-citizens who are at this moment exposed to the savage ferocity of profligate men, and whose safety may depend upon the *justice* this day done in this place. Yet this is no place for the indulgence of feelings after all on the one side or the other. The sterner duty of investigating the truth, without partiality or favor to any one, now belongs to you, and demands all the powers of your minds to do right, to decide truly, to follow conscience, unbiased by your affections or feelings. You have nothing to do with the consequences of your verdict, those consequences belong to the law, to legislators, to the providence of God; and you ought not to look at them for any other purpose than to impress on your minds the obligation of honestly and carefully proceeding in your investigations, and coming conscientiously and rightly to

the just and true decision of this important issue. If what the junior learned gentleman also said of the overruling providence of God be true, as doubtless it is, there can be no judicial murder, and there can have been no judicial murders, for not "a sparrow falls" without his consent. And you need be under no terror in declaring the guilt of the accused if your conscience (the vicegerent of God upon earth) tells you he is guilty. There is a tribunal which cannot err, and can rectify the errors of all others; you should imitate its justice and judgment. But were any error or mistake to be made by you, or if anything hereafter were to be discovered favorable to the prisoner, of which now he cannot have the benefit, even under our laws, there is a *source* of mercy which can save him if he ought to be saved; and doubtless the benevolent efforts which have incurred so much labor in preparing his defence will go onward to that constitutional fountain of clemency for his relief, if there is necessity for such relief, and if it ought to be asked for or granted. Consider, then, that if firmness is ever a virtue, it is when it is fulfilling the dictates of justice; and no one should ever think, that in this age, in this community, under our laws, there would be a deficiency of mercy mingled with justice in the place where it ought to be found. Perhaps no greater proof could be given of the benevolence and fairness of our system of jurisprudence than this trial exhibits. A poor, miserable, and profligate young man, of bad character, without money, and without friends who are able or willing to assist him, commits an atrocious deed which fills the whole community with horror, and his life is to be the forfeit of the act if he cannot be defended. The court assign him eminent and able counsel, one of them most intimate with the concerns of the state prison; both bound to help him to the extent of their ability; the commonwealth opens its treasury to him; his father, and relatives and witnesses are paid from the public

chest to come and testify for him ; the heads of two of the most important institutions in this state, (the lunatic hospitals) one public, the other private, and another medical gentleman from another state, spend whole days in court, travelling many miles, and leaving their important stations to come twice to his rescue. Culprits are pardoned to make them competent witnesses for him ; nothing is denied, every thing afforded to him, as if he was the most wealthy and important member of society. Can anything be more honorable to the character of this commonwealth for liberality and mercy ? You need not fear, then, to do your duty. Under such laws, with such a public care, under the superintending guidance and control of so wise a court, no wrong can be done to him. In your pursuit of truth, which is now your only duty, you will not shut your eyes to it, for fear of the consequences of your seeing and declaring it. You will not permit an inconsiderate compassion, however amiable, to undermine the foundations of justice, or to shield a malicious and responsible culprit.

Let us then consider, for a moment, what is expected of you, and what it is your duty to do, in the solemn position in which you are now placed.

You are to inquire and decide if one of your fellow-citizens, in a most responsible office, has been killed.

2. Who killed him.

3. What is the character of the homicide.

4. Whether there is any excuse or justification for the deed.

After such a protracted introduction of testimony, taking a very wide range, it is useful to go back to see what the issue is—upon what points the counsel differ—what are the real questions you are to decide. They lie in a much narrower compass than is supposed. The disputed questions are few, the law is clear, and there is but a single point of difficulty.

Let us see how far we can proceed upon a solid foundation, upon facts fully proved, or undenied.

First. It is true, beyond all controversy, that Mr. Lincoln was hastily and unlawfully slain in the shoe-shop in the Massachusetts State Prison, on the afternoon of the 15th of June last.

Second. It is equally true that Abner Rogers, Jr. then and there killed him.

Third. It is also certain that that homicide is murder or manslaughter, if perpetrated by an accountable moral agent — murder, if committed with malice aforethought, express or implied — manslaughter, if upon a sudden gust of passion, or an uncontrollable impulse without previous malice.

This, then, is the whole case, if — Fourthly, the perpetrator of the deed was an accountable moral agent.

The case then depends upon your decision of this single question — Was Abner Rogers, Jr. an accountable, moral agent at the time of the homicide?

1. It will be my duty to call your attention to the facts, circumstances and arguments, demonstrating that he was at that time and place “a person of competent understanding to distinguish right from wrong,” in the language of the definition of murder, and an accountable moral agent. I adhere to this *criterion of sanity*, notwithstanding what each of the learned counsel has said against it, because *it is the language of this Court, and the law of Massachusetts*.

2. I will ask your attention to my view of the facts, circumstances, and arguments which the prisoner’s counsel adduce as evidence of his insanity, total or partial; and I will endeavor to convince you of their fallacy and futility, making a weak case on their side, notwithstanding the medical testimony they have enlisted in his behalf, to which I shall specially ask your attention; contending, in behalf of the Commonwealth, that, at the time of the homicide, Abner

Rogers was an accountable moral agent, capable of self-government, and of distinguishing right from wrong.

3. I will then collect and lay before you the evidence both of express and implied malice, showing you the homicide has the characteristics of murder.

4. Should I fail in this, I shall contend that if you believe him to have been partially insane, and excited at the sight of the warden with a strong impulse to attack him, yet if he had reason enough left to control that impulse, and did not so control it, then, like the act of a man of strong passions under strong provocation, real or imaginary, the crime at least is manslaughter, without previous malice.

In considering what the government ought to prove to show he was a moral agent, I must first ask your attention to the presumptions of law.

The law presumes every man to be rational, until the contrary is proved. Man is a creature endowed with reason. He is above the brutes; it is his nature to be rational. The law presumes him to be a moral agent, a free agent, accountable for his actions, governed by his own will, and capable of distinguishing right from wrong. Laws are enacted for the government of mankind, upon the presumption that they are rational and accountable beings; that they can understand laws, and are bound to be controlled by them, and are punishable if they violate them. All religion is founded on the same fact and presumption; all municipal law stands on this basis. We begin then with this presumption of law, which in the first place is enough, until overthrown by proof of the contrary, by something besides the foolish talk and idle pretensions of a lazy and disobedient convict.

We next look to the history of Abner Rogers, Jr.; and I have never seen an attempt to prove insanity from a man's history more abortive, some supposed specimens so frivolous,

indeed, as to be almost ludicrous. His fits in infancy disappeared at seven years old. We know nothing of their nature or consequences ; there is no doctor to tell us. The gash in the face with the broken scythe was slight on the forehead, and the wound on his nose did not affect his understanding. His groans in his sleep, enumerated with so much industry, seem to have been constitutional, but affected not his mind. He followed his work in the day-time as usual, and his father never recollects, of his own knowledge and sight, that he was ever insane. He was never dealt with as an insane person by his father, by his brothers, his employers, his companions, the juries who tried him, the judges who sentenced him, the prison officers and contractors who had daily intercourse with him. He was never under guardianship ; he made his own contracts, earned his own living. During the whole time he was in prison he worked well ; no complaint was made, no discount demanded ; full price per day was paid for him. Mr. Crowninshield and Mr. Braman speak well of his conduct and work. The superintendents of the work-shops speak well of him all along, up to the week of the homicide. Doubtless he was occasionally sick ; he certainly was a dissipated and profligate young man. He confesses he had led a wicked life. Headache, indigestion, hot blood, fever, nightmare, visited him as they do others. If he walked his chamber at night, he was rational all day. It seems to me whoever affirms him to be insane, from what his father, cousins, and friends, have testified of his former life, must strain evidence amazingly. His whole history shows him to be sane, and that all mankind who knew or dealt with him considered him as sound in his mind, and so treated him, as capable of the ordinary business of life, and with competent understanding for its duties and responsibilities. The presumptions of law and the history of his life, therefore, up to the week of the homicide, coincide in showing him to have been a sane man, and an accountable moral agent, as other men ordinarily are.

And now consider that *ever since* the homicide he has been *rational*, and has never since heard voices, or been under any delusion. I thought with Dr. Bell, that, at the last trial, Mr. Dwight did describe him, on the Friday morning after that fatal Thursday, as a *perfect maniac*. But I now understand the language was applied to his dress, his beard, his uncombed hair, his exterior, his appearances, and not so much to his mind. Certainly, Dr. Bell says he was, at that interview of his on Saturday morning, rational, talked rationally on all subjects, but when he spoke of the voices, — and then it was as an historian giving a narrative of past events, and not as hearing voices then, and indeed describing them as imaginary, even to Dr. Bell. He still believed that he had heard the voices in past time, but was rationally narrating the circumstances, and occasionally confessing that the voices were merely fanciful. Dr. Bell talked with him as then rational.

It is clear, from Dr. Bell's testimony, as I understand it, and corroborated by the deputy warden, by Fogg, and other officers, and even Mr. Dwight, in *this trial*, that Rogers was rational on that morning. Certainly he was so immediately after the murder. He said to Warren B. Parker, "*I have fixed the warden!*" — was calm, submissive during the search — walked quietly up to the old prison, (the supposed place of his horror,) — said he would walk alone. There was no difference in him, but the natural consequence of having committed such an atrocious crime ; no apprehension of the popo game or checkerberry, though led up to the old prison. From that time to this he has been rational, sensible, sorrowful at the coffin ; considering the disastrous effects upon his own family, and the warden's, &c. In Leverett street jail he was and has been as rational as other men. The pulse is no criterion of insanity. Doubtless he was excited after such an outrage, and also was bodily sick ; but that was no proof of insanity.

We have then, 1, the presumptions of law ; 2, his prior history ; 3, his subsequent history ; all showing him to be and to have been a rational, accountable, moral agent, like the rest of mankind. We have now viewed his whole life but four days, and I will proceed to consider his history for those four days.

I shall pass over the testimony of William Burnet, a pardoned convict, who made him crazy in 1835, and a month or two before the homicide, as he is contradicted by all the officers, and every one else who knew him. His evidence is incredible and worthless from his manner and position ; and Savary's testimony is no better. He also was another pardoned convict, who endeavored to make out something, because Braman thought, on the Thursday or Friday before, he overstaid his time in walking in the yard.

Rogers expressed some fears on Monday to Sargent that the warden would punish him. He was probably conscious of faults which deserved punishment.

The first account of noise in his cell, is given by Savary. I have much doubt whether you will believe Savary. He is a competent, but I think not a credible witness. He colors and strains too much ; his manner lessened all confidence in him, and he had strong motives before he was pardoned to overstate the facts, and now to adhere to those overstatements. He says Monday morning he heard a noise like one disturbed by *nightmare* ; this perhaps, is probable, Rogers was suffering under indigestion, horrible dreams or nightmare. On Monday night he is more particular, but is much contradicted by James N. Gardiner. From Gardiner's story my solution is, that Rogers had been asleep until about 2 o'clock in the morning. Gardiner had gone his round at 12, all then was quiet, &c. At 2 o'clock there were noises, and Rogers told him that he had heard Cole and Robinson say that the warden would shut him up, and keep him the rest

of the time. This he probably dreamed ; besides, Cole and Robinson may have said so the day before.

I think this was merely a dream of Rogers — it left a strong impression which he could not get rid off — such things are not uncommon in the soundest men, and in a nervous man like Rogers, the thought of such a dream would agitate him, and be likely to produce the fears of reality. Besides, he frequently saw Cole and Robinson in the blacksmith shop. Probably there was some trick or joke played on him by them. The poco game and checkerberry perhaps were talked about in fact and reality. He told Dr. Bell that once going to the blacksmith's shop he heard the voices. He dreamed probably of them afterwards — saw those prisoners daily — and they may have attempted to work on his feelings or apprehensions frequently ; to them a matter of mere sport but troublesome to a nervous man like Rogers. He was often troubled in his sleep, constitutionally so, and likely to confound memory with dreams, to confound what he had heard in reality with his dreams, and his dreams with realities. There is as much proof of a dream, as of his hearing any voices. Gardiner and Savary thought the noises as from a man just waking from dreams or nightmare. Indeed, let me ask you, what *proof* have you of his hearing any voices at all? His declaration is no proof — no evidence — and it stands *solely* on his statement. Suppose I maintain that it is all a pretence, a falsehood, and that he never heard any such voices ; what proof have you to the contrary ?

The whole of this defence is built up on Rogers's say-so — his *ipse dixit*, upon evidence made for himself — a fancy, an imagination, a dream. Besides, he repeatedly said it was all imagination. How do you know he imagined it, or fancied it ? Is a man to kill another and then justify under a piece of imagination, under a fanciful declaration which has the appearance of an incredible falsehood ?

Was it ever heard of before in a court of justice, that a man justified a murder by saying, I fancied such and such a thing? and that his word only was taken for proof? How easy is such a defence! How dangerous! He violated the rules—he made noises—he expected punishment, and his companions frightened him, or his dreams did. He had to make some excuse to Gardiner, probably to prevent his being reported. He invented a plausible tale, not in anticipation of a murder, but to get rid of punishment for making a noise, perhaps part of his dream was used, or related, as it would answer. Having once invented and told it, he repeated it, stuck to it, got it by heart, repeated it with some variations, but ran over it rapidly, and designedly, and artfully, on all occasions when he thought it would do him good. He had it by heart. It seldom varied; same expressions used, the same nonsense run over until it ceased to have any effect. Nightmare, dreams, and this hypothesis founded on his low cunning, will solve all his strange or extraordinary conduct. He had a low cunning, and boasted that he was a smarter man than they took him to be. The invention and cunning was not preparatory to a homicide, but mere excuses to get rid of punishment.

Is it safe, in so dreadful a case as this is, to let a man off because he had some shrewdness and some low cunning to devise a silly fable and stick to it? a pretence not proved by a particle of testimony, but only by his saying so, and his very declarations frequently contradicted by his confessions that it was all imaginary.

The proceedings on the subsequent days are of a similar character, both on Tuesday and Wednesday, and it is not material to comment on them particularly. He was rational in all respects, but telling that silly story, repeating that groundless excuse for making disturbing and forbidden noises. On Thursday afternoon after he was showered, he was mad,

angry, ferocious, when he came out of his cell ; and when he got to the shop, revengeful, and agitated. Now there are two hypotheses before you. One is, that he was really afraid, and uneasy, and running about to get persons to intercede for him. Another is, that he was seeking for the warden to *glut* his *revenge* — looking out for him, expecting him, watching for him. Contemplating such an atrocious act would naturally disturb a man's mind, would give him a different appearance, might even produce tears ; but he was rational, he knew what he was about, minded orders, did some work, *governed* himself, but was more agitated after he heard that the warden was coming than before. This agitation might as well proceed from his then, in his angry state, resolving no longer to delay the fatal deed ; and all this supposition of insanity may arise *a posteriori*, from the mistaken benevolence of Mr. Dwight and others.

He performed his work all those four days, and on the last day even after he had heard the warden was coming, cutting the binding of the mattress in one place, just before the deed, the only fault in it, an accident which might have happened to any one with a sharp knife. He conversed rationally, obeyed orders, submitted to reproof, controlled, restrained, managed and governed himself during the whole day, and up to the moment of the fatal deed. Upon every other subject but fear of punishment he was rational, and that fear was often pacified, and even by himself attributed to his absurd imaginations, and was so pacified and so attributed that same afternoon.

The theory on the other side is, that upon sight of the warden, without previous thought of injuring him, a momentary uncontrollable impulse and outbreak came over him as a *necessary means of self-defence*, and that he acted under this strong delusion, and had no moral self-control. To which it may be answered that he was then in no danger, and had

been threatened with none. All the punishment he had deserved, he had received a few hours before. Mr. Braman had promised to intercede for him; he was assured the warden had no intention to punish him. The warden came not to punish him, nor even to speak to him. It was not the common time to speak to a prisoner about punishment, nor the usual place. The warden did not even look at him or regard him; not a motion or a gesture of the warden that had any connection with Rogers, or reference to him. His back was to him, he was not near Rogers, nor going to him; he had other business, came for another purpose, had stopped, and was engaged in that business. The warden had threatened nothing—all that had passed had been atoned for by the previous showering of Rogers. His conduct then had no reference to Rogers, and gave no foundation for suspicion, fear, or resentment. Under these circumstances, all the indications of previous malice, of which there are many, (all immediate danger or necessity being completely disproved,) go to refute this hypothesis of sudden outbreak of a diseased mind incapable of self-restraint. Everything showing he had meditated the death of the warden refutes the idea of a sudden conception, or temporary outbreak, or impulse, and fixes the proof of that express malice, which Mr. Bigelow has labored so hard, and as I think, so unsuccessfully to disprove. Now these indications of malice are very important in this connection, as well as concerning the character of the homicide, for your consideration. I will enumerate them, and you will judge if the senior counsel of the prisoner, has any reason to congratulate himself that his client is free from having a black heart.

1. From Mr. Fogg's testimony — Rogers confessed to Mr. Curtis, that after Watts had hung himself, he, Rogers, said to Rich, that Watts was a fool, because he did not kill the warden before he killed himself. This is very expressive of what

was in his own heart, a manifestation of his own wishes, a contemplation of, and desire for, violence to the warden.

2. From Tully's evidence — That on two several occasions Rogers had with profane expressions used threats, that he would *fix* the warden before he left the prison. This part of the case is remarkable also for the similarity of the language of Rogers immediately after he had killed Mr. Lincoln, — that he *HAD fixed* the warden, as testified by Warren B. Parker ; the malicious language of the prophecy being repeated with demoniac gratification immediately after its cruel fulfilment, clearly showing the language was no fiction of Tully's, but Rogers's own phraseology. Besides, Tully had nothing to gain ; his pardon only restored his competency as a witness, but did not shorten his time as a prisoner. His last crimes were intoxication.

3. From Mr. Jaquith's testimony — The proclamation proceeding from Rogers at the time of the fatal deed, "I TOLD YOU I WOULD !" He is certain those were the exact words, the word *I* pronounced twice, not *he*, as Mr. Bigelow asks you to suppose ; clearly alluding to previous threats, which Rogers had, probably, at some prior time, made even to Mr. Lincoln himself. There is no sound objection to Mr. Jaquith's testimony or character. There was not time, on that fatal night, before the coroner's inquest, to recollect or mention all things which occurred ; many witnesses, much confusion and excitement, and very little time allowed in that summary investigation.

4. From Mr. Fogg's testimony again — who heard Rogers, on two different occasions, say some time after the homicide, "if the warden had let me go six months ago, he would have been alive, and I among my friends." This is not the language of a maniac, an idiot, or an unconscious being. It has probably a direct allusion to, and is indicative of, his resentment against Mr. Lincoln in the matter of the additional sen-

tence of six months, which was *longer* than those of other convicts sentenced additionally *at the same time*, though not so much as he naturally expected, and the whole supposed by him to be *Mr. Lincoln's voluntary act*.

5. From Warren B. Parker's evidence again — 'The declaration of Rogers of his intention to commit suicide, "I have fixed the warden, and I will have a rope round my neck to-night." It shows a contemplation of murder and suicide, a connection between the two deeds, a mind harboring such fatal designs, premeditation upon such atrocious acts, a knowledge of the probable consequences, a designed voluntary escape from the penalties of the law, and a consciousness of the malignity and criminality of his actions. Rogers also said to Rich, that Watts *ought* to have murdered Mr. Lincoln before he killed himself, or was a fool for not committing the murder before the suicide.

6. The deliberate selection of the *longest* knife from Reed's work-bench refutes the idea of sudden, uncontrollable outbreak. There was a *shorter* knife on his own table, or in his own hand, *too short* to reach through the garments of Mr. Lincoln and the integuments of his body to a vital part. The knife taken from Reed's bench was the *longest* in Reed's possession; there were shorter ones there. A sudden, uncontrollable impulse would have used the weapon in hand, or soonest attainable, especially if, as Mr. Bigelow says, the short knives would do as well. The reflection that a better weapon was elsewhere and could be had, indicated consciousness, calculation, restraint; reasoning upon a true state of things and circumstances, and his action upon that reflection shows a power of self-government, and refutes the hypothesis of an uncontrollable impulse and outbreak, senseless, irrational and irresistible.

7. To the same effect is the circuitous, cautious, cunning mode of approach to Mr. Lincoln, studiously coming up be-

hind him, avoiding a direct and the nearest path to him, because it would expose him to Mr. Lincoln's sight, and defeat his murderous intent. This is self-management, deliberate reflection, controlling calculation, and not the impulsive overbearing, unchecked, and irrepressible conduct of a maniac, who could not control, check, or repress his actions. Besides the outbreak, if insane, would have been earlier; as soon as he saw Mr. Lincoln, he would have rushed at him at once, not waited for an unguarded posture, and he would not have so long reasoned upon the most favorable mode of attack.

8. These indications of premeditated malice are confirmed by the testimony of Thomas Russell, a man of irreproachable character, notwithstanding the attempt of both counsel to impeach him. It was unfortunate that Mr. Bradford Sumner told the officers to say nothing they knew, until investigations took place in court. It prevented my learning many very important facts, some of which I have learned for the *first time* on this second trial. It was well designed advice on the part of the chairman of the inspectors of the prison, but it was not intended to direct the officers not to disclose to counsel the facts in their knowledge, though they so interpreted it. This accounts for their previous silence, and for their not being summoned on the first trial, in which their testimony might have been, and probably would have been conclusive. Now Thomas Russell declares, on his oath, that he heard Rogers, as far back as April, say, "*before I leave, I'll pay the warden for it. I should'nt have got so much additional sentence if it had not been for him.*" How corroborative of Tully, and the other threatenings! How conclusive an answer to Mr. Bigelow's argument upon the supposed want of motive to revenge! To this witness, also, he boasted that he was a smarter man than they took him to be. All the rest of Mr. Thomas Russell's testimony is in point.

9. Malice aforethought is also shown by the testimony of Mr. Bean. He also is assailed by the prisoner's counsel, but without good cause. He is very intelligent, and, I believe, very fair. He was called to a particular point in the former trial, just before an adjournment, and, not being much interrogated, he did not tell all he knew. He had never been a witness in court before, and his engagements confined him at the prison, so that he was in court but a few minutes. Mr. Bemis is very cautious in his language in contradicting Mr. Bean. He says, "I am confident Mr. Bean never mentioned to me at the prison the threats he has now testified to, *in the same terms.*" He admits that Mr. Bean told him, he had heard Rogers FREQUENTLY say, that the warden would suffer for punishing him. How strongly, then, Mr. Bemis confirms and supports Mr. Bean! I look upon this testimony of Mr. Bean, also, as confirming Tully, confirming Thomas Russell, confirming Jaquith, and as proving the fact that Rogers harbored revenge against Mr. Lincoln for the additional sentence, and for punishing him for every little offence. Mr. Bean is express and positive to Rogers's language, *that he would fix Lincoln before his time was out*, — the very language he used to Tully, reiterated by Rogers after the fatal deed, *he had fixed the warden*. What he meant by *fixing* is demonstrated by the threat and its execution, and is clear evidence of *express* malice. I do not wonder the senior counsel felt the pressure of this part of the case.

Now therefore, if, from the evidence in this case, both the homicide and the malice aforethought, both *express* in previous threats, and *implied* from the nature of the instrument and the savage brutality of the act, are proved, the crime of murder in this defendant is established, unless the charge is defeated by some justification or excuse which can be urged in his behalf. No *justification* is suggested, or attempted to be proved. What, then, is the *excuse* which ought to be

established beyond doubt? It is alleged, and ought to be incontestably proved, considering the nature of this extraordinary defence,—probably the *after-thought* of benevolent individuals,—

1. That Rogers heard false voices.

2. That he believed those voices.

3. That he really believed the warden intended to confine him, and put him to death by the poco game, checkerberry, or starvation.

4. That he acted from no grudge or resentment against the warden, but from the delusion produced by the false voices; and a sincere belief, consequent thereupon, that the homicidal act was an indispensable measure of self-defence.

5. That he had never previously contemplated any bodily harm to the warden; but a sudden, unexpected, instantaneous, and irresistible impulse and outbreak, impelled him to the fatal deed.

6. That he had not reason or moral force enough left to check or control that impulse, in consequence of mental disease; and that there was a total want of consciousness that the act was against the laws of God and man, and that all distinctions between right and wrong, so far as related to the homicidal act, had ceased to exist in his mind.

If all this is proved, doubtless it would amount to an excuse, relieving the accused from the penal responsibility of the act. But I contend, upon this evidence, that such excuse is not established by the testimony which has been offered, and that it would, in the highest degree, be unsafe and dangerous to the community, to the lives of other men, to excuse homicidal acts committed under such circumstances, and persons from criminal responsibility whose unsoundness of mind, or want of an understanding to distinguish right from wrong, or whose partial insanity is attempted to be established by such slight evidence. I contend that there is a failure of

proof on the part of the prisoner ; that these various allegations, necessary to make out the excuse which is claimed for him, are not established by satisfactory testimony ; on the contrary, it is demonstrably proved by credible evidence, that *IT IS a case of human resentments, of premeditated plans, of long-harbored designs, of deliberate contemplation, of a wicked heart, a cruel temper, a mind bent on mischief and personal violence, a carrying out of prior threats, and the result of calculation, vengeance, revenge and aforethought malice.* Rogers had controlled himself frequently that afternoon, obeyed orders, followed directions, been pacified, calmed, yielded up his groundless fears, commanded his thoughts and actions, confessed his foolish apprehensions, and that they were imaginary, and went to his work with assurances that the warden intended no harm to him. His impulse was controllable, COULD BE CONTROLLED, and was controlled until the best time to strike ; his understanding was not darkened, but clear, calculating and bright ; he had not lost his consciousness of right and wrong, he knew what he did, and boasted of it at the moment : “ *I told you I would.*” In no act had he evinced want of intelligence, understanding or moral power ; his preceding, contemporaneous, and subsequent words and actions demonstrated his self-possession, and his knowledge of what he was doing and had done, and of the natural consequences thereof. He was treated as a moral agent, and in many respects, indeed in all respects, acted as such.

Consider, also, that, *if he really was under a delusion*, that the warden intended to shut him up and practise some mysterious cruelty upon him, and acted under the influence of such belief, and in all other respects he was sound and rational, what ought to be the just and legal consequence ? Now an impulse springing out of such a belief, (the belief being actual and sincere) should excuse him just as much and *no more* than an impulse in a sane man would excuse him, derived

from a positive belief of such similar actual danger. If, therefore, a sound man really believed that the warden intended, *at some future indefinite time*, to subject him to a cruel and dangerous punishment, and that the fact of the belief and the fact of the intent were absolutely true, that the warden did intend some future unjustifiable cruelty towards him, an impulse derived from such a belief, well-grounded as the belief might be, could in no wise be justified, if it led to a homicidal act towards the warden *in anticipation of all such attempt* on the part of the warden to put such unlawful cruelty into execution. The warden might repent, change his mind, and never attempt to do the apprehended act. A moment's reflection might dissipate the apprehension. A fear of future, distant danger, is no lawful excuse of homicide. The supposed insanity in Rogers being *merely the delusion of such a belief*, if the belief itself is no excuse for the homicidal act in a rational man, it cannot be an excuse for a man irrational, *ONLY in respect of such belief*. The rule of law is well expressed by Lord Hale, (p. 51,) "Without *actual assault* by B upon A, A may not kill B by way of *prevention*, but must avoid the danger by flight or other means. A bare fear, though well grounded, gives not a man leave to take another's life." Now the mind of Rogers was not so prostrated as to be incapable of control. He did control himself constantly; he had the power of self-government; he often did control even his absurd fears, and dismiss them. Mere strangeness of conduct, some alteration in his behavior, even some disturbance of his mind, even some appearance of not being right, as stated by some witness, some partial and slight delusion upon one subject, some strong impulse when in no actual danger; indeed, a sincere apprehension that some indefinite evil was overhanging him, and was to fall on him in a future time, all these do not amount to evidence of irresistible control and legal irresponsible insanity. To discharge persons

charged with atrocious criminal acts for causes so slight or insufficient, and under such circumstances as these, will be most dangerous to society. To cover up personal malice and cruel revenge in the mantle of such *supposed* uncontrollable insanity is misplaced clemency. It is the duty of the jury to discriminate in these nice matters, and to require indubitable proof of overwhelming delusion and resistless impulse; the law casts the responsibility on them, and obliges them to demand, before they excuse the assassin, *entire satisfaction* on this head. They are entitled to all the guidance and assistance which the witnesses, the counsel or the court can give them, and having received it, the decision of the important issue rests solely on their conscience, and upon their responsibility to God and man for an honest discharge of such painful duty. *Mere suspicion* of delusion or of overpowering impulse is not enough. Their difficulties are increased, no doubt, by the nature of the subject of investigation, the diseases, the temporary and varying maladies, the controllable and uncontrollable impulses of the intellectual part of human nature. The mind of man is "an ocean of science, many parts of which are yet unnavigable by human sagacity." Men of common sense and ordinary experience have some means, and the power, in many instances, of judging of the soundness and unsoundness of other men's understanding; jurors are compelled to make up their judgment in these delicate and mysterious cases. Medical men sometimes have larger experience and greater sagacity upon such subjects. Nevertheless much of the science of the mind as well as of the body is yet but theoretical, and many of the different experts have different theories. Who can tell which are right? What more proverbial than that doctors disagree? Dr. Ray, in this trial says, in some things he agrees with Esquirol, and in others, differs. This also is manifest in his book. What changes and revolutions in medical knowledge

and practice within fifty or a hundred years? What more extraordinary changes are still to take place in the century now passing before us? Can therefore mere *opinions* of medical men, founded on representations of facts not seen by themselves, representations coming through partial, contradictory, suspicious and doubtful channels, be a sure, a satisfactory, or a safe foundation for a judicial verdict? It is, indeed, common, to introduce such evidence in capital trials, where insanity is the defence, and it is, no doubt, right to do so, but always with much caution, because the foundation is so uncertain. All I wish to inculcate upon you is the great degree of caution with which you ought to receive it, especially in this case, in which the prisoner's medical witnesses *never saw him before the deed was done*. I will not trust myself to state all the objections to it, which I promised, or to the manner in which medical testimony usually is procured. I prefer you should take the statement of medical men themselves, who ought to be considered as fair reasoners on such a subject, and whose arguments will not be attributed to professional prejudice or unprofessional ignorance. Hear what a distinguished medical man has written:—"The plea of insanity may be improperly made and *abetted* by *medical* testimony. The act committed may be wrongly taken as evidence of insanity; for it is impossible to say, *à priori*, what criminal acts should, and what should not, be deemed acts of insanity. This is undoubtedly true; and the *only remedy* is to *abolish medical testimony* as it is at present given on trials for crime where insanity is the plea. Questions of this important nature should be referred to a board of twelve or more competent men; the state of mind of a person accused of crime should not be left to be decided by *those* members of the profession whom the prisoner or his friends MAY SELECT for their *known support* of his case. As to the *question of responsibility* and *punishment*, this should be entrusted to the authorities of the law."

Such is the language of a very able article in the Review of *seven* works on the plea of insanity, in the 31st number of the British and Foreign Medical Review for July, 1843, published shortly after the trial of Daniel McNaughten for the murder of Edward Drummond, the private secretary of Sir Robert Peel, the result of which trial made a great excitement on the subject of insanity throughout England. It is the *closing paragraph* of that well-written and sensible article. But there are other passages equally worthy of your consideration. Here is an extract from page 100: "The *unsettled state of opinion* which at present exists among medical men on the subject of insanity, is, in his opinion, (Sir A. Crichton's) the source of two evils, — that some criminals who ought to be punished are acquitted of responsibility, while, in other instances, true homicidal monomaniacs are convicted and executed. It is difficult to say of which evil society has now the greater reason to complain; but it is a *matter of sad reflection* that the result depends *less* on the *facts proved* than on the medical and legal ingenuity engaged in the prosecution or defence." This passage is a decisive proof that criminals who ought to be punished are acquitted, and furnishes a complete answer to some of the assertions of both of the prisoner's counsel on this point. Still farther, in the same page — "Medical men have, on these occasions, passed often *beyond* the legitimate sphere of their duties. It is not for a medical witness, as such, to discuss the subject of free will, human responsibility, or the degree of punishment which should follow an offence. By so doing he *usurps* the functions of the judge and jury, and takes upon himself to dictate to society the means which it should employ for the protection of its members. In these cases his professional studies give *him* no advantage over the common sense and experience of mankind — a fact made evident by *the very different opinions* entertained on these

subjects among *equally eminent* members of the profession." In alluding to the fact "from the evidence given on some recent occasions, it would rather appear that the accused was tried by the medical witnesses than by the court, before which he was arraigned," (which possibly hereafter may be said of this trial also,) the reviewer quotes with approbation the following passage from Sir Alexander Crichton's work, published in 1842: —

"If revealed truth, which declares that we are to answer for the deeds we commit in the flesh, is discredited, it is not by metaphysical arguments that we can hope to settle our faith; but this every one must needs know with certainty, that in this country, and in every other civilized state which is careful of the interests of society, the laws are founded on the doctrine of the freedom of the will, as it is called, or on human responsibility; and also on the belief, that examples of punishment and the dread of future condemnation will influence the determinations and actions of men until they are bereft of reason by disease. To the judge must be left the task of considering the circumstances which palliate offences, and make criminals objects of special commiseration and mercy; but *the attempt* on the part of learned doctors in law or medicine to confound vice with insanity, and consequently to condemn the right of human punishment, I consider as one of the many *dangerous innovations* which the proud philosophy of the nineteenth century has produced."

But besides these powerful extracts from medical writers, other sensible men of high repute have expressed themselves on this subject in terms no less decisive. A writer in the *Westminster Review* (No. 77, May, 1843, p. 252,) observes, "Jurors strive earnestly to escape from the duty of acting in a case of murder; and when at length a full jury is obtained, every man catches at every possible pretext to come to any

conclusion rather than that of guilty. And now since counsel are allowed in all cases, every advantage is skilfully taken of this feeling, and no pretext is too absurd to trust to for an acquittal; and in no case, no matter how atrocious or clear, can a conviction be depended upon. The plea of insanity is a grand instrument in this work of morbid humanity. The more atrocious the deed, the more willing do judge and jury become to listen to every artful suggestion which a practical dexterity can suggest, or a crotchety physician will hazard. The *atrociousness* itself is deemed proof of the insanity — the very *openness* of the deed will bear the same interpretation; so that, at length, a man is permitted with impunity to shoot another, in broad day, in the most frequented part of London — to take all sorts of precautions — to frame schemes — to utter falsehoods, in order to hide his criminal intention, and to secure the death of his unoffending victim, and yet be permitted to escape as a madman.”

In this connection I wish to recall to your minds a candid remark of Dr. Bell himself, in giving his opinion in this case. “The great mass of evidence which I have since heard, *supposing it to be true*, corroborates my first opinion, and I have heard but few things inconsistent with it.” There are some things, then, in this case, inconsistent with Dr. Bell’s *opinion*. He does not tell us what they are, nor how many. Moreover, in addition to all this, you are to consider that there are degrees in insanity, from very slight aberrations of intellect, some occasional or temporary unsoundness of mind, to absolute permanent frenzy, and furious madness. Every degree does not relieve from criminal responsibility. It is not enough to prove some delusion on some subject, but reason must be wholly dethroned, right and wrong must be confounded, consciousness of criminality must be wholly lost. I submit for your consideration the proposition with great confidence, that no proof has here been given to you, proving

that at the time of this atrocious homicide Abner Rogers was so bereft of reason, so deprived of his intellectual and moral powers. Everything shows the contrary — indicates, at most, but a trifling delusion, mistaking dreams and idle talk of prisoners, for evidence of facts and intentions, a delusion corrected often by himself, always by others. And in determining this case, you must never lose sight of a most important principle of law touching this subject, that *the burthen of proof* of total insanity is to be sustained by the prisoner or his counsel, and if it be not proved *beyond a reasonable doubt*, the defence fails. No man can say, that reasonable and very strong doubts do not rest over such a defence on this evidence.

The positions the prisoner's counsel must sustain to your *entire* satisfaction I have enumerated, and the evidence fails to substantiate them. There is no *proof* that he heard any false voices, or believed any, or that he had any serious apprehension that the warden intended to shut him up, or play the popo game, or give him checkerberry, &c. He confessed, on several occasions, this was mere fancy or dreams; and there is no proof that he had not moral force to control his actions; on the contrary, he did control them on all occasions. There is not a particle of proof that, at the time of the murder, he was under an uncontrollable impulse; his conduct and actions, at that time, show self-possession, self-management, cool contrivance and deliberation, careful preparation, a well-considered mode of attack, and he gave utterance to the contemporaneous expression of their accomplishing what he said he would do, and soon after the deed was done he boasted of having done it. The evidence does show he acted from revenge; that he had motives for vengeance, as he thought; that he expressed previous threats to Tully, to Russell, to Bean, and acknowledged to the chaplain, Mr. Curtis, a previous wish that the warden had been killed; and there is

nothing substantial or satisfactory in the testimony, showing that his whole conduct, or any part of it, was inconsistent with the hypothesis of his acting, on this tragic occasion, from human resentments and motives of revenge, the ordinary basis of malice aforethought.

The medical testimony relied upon is wholly derived (so far as personal examination went of the defendant's witnesses only Dr. Bell saw Rogers) from the conduct and language of the prisoner, hours and days *after* the deed was done, and after he had motives to deceive all he could ; or from the statements of the prisoner, or of other persons ; and the difficulty of distinguishing real from feigned insanity, in such cases, is acknowledged to be very great, by all the medical writers and witnesses. The talents of Rogers were underrated, according to his own declaration ; I think Dr. Bell underrated him, and formed some of his opinions on the supposed incapacity of Rogers. He had much more cunning than he was credited for ; and the *opinions* of the medical men, based on *such* testimony as has been introduced into this case from *some* of the witnesses, cannot be worth much. They assume it is all true, and assuming it thus to be wholly true, in all its parts, they base an opinion upon it. Now there is much that is incredible and unworthy of belief in this evidence, and much from impure and discredited sources. I allude particularly to the testimony of George H. Savary, William Burnett, and James H. Bradley, exceedingly colored, and coming from a source not entitled to confidence. I have alluded before to their positions and motives. I suppose, also, you will think Mr. Dwight's testimony will admit some grains of allowance from his known zeal, as upon some small points he is not exactly supported by his friend Dr. Bell, in some of the particulars. As to Mr. Sargent, he was an inexperienced officer, new in the command of a work-shop, and not familiar with the tricks and impositions of the convicts.

Mr. Crowninshield's and Mr. Braman's testimony is all reconcilable with the hypothesis of feigned insanity, or, rather, feigned excuses to avoid deserved punishment; and the opinions of Sargent, Crowninshield and Braman, and even the opinions of the medical men, formed under such circumstances, are more than balanced by the opinions of Mr. Lincoln, himself a good judge, and of great experience in such cases; Mr. Payne, also, of long experience, Mr. Fogg, the Messrs. Russell, and others, who did not think him excusable for any offence, on the ground of insanity. Dr. Walker, too, who had long known Rogers, his habits, constitution and pretences, and who saw him in the morning before he did the deed; his opinion and statements are of great weight, and all against the notion of his insanity.

With a fair view of all this testimony, please to remember the proof must be so clear and decisive of uncontrollable insanity, at the time of the homicide, as to leave no reasonable doubt. The point is not for the government to prove he was of sound mind; the presumptions of law, and the ordinary evidence to that effect, are enough until they are disproved. Now, as I said before, the burthen of proving this is undertaken on the other side; if they leave it a balanced question; if there be any mystery or uncertainty about it; if it is doubtful, nay, if it is even probable; — that is not enough for them. So I hold the law; and to relax that law will be dangerous to society. If there be a doubt, then, the proof is insufficient, and the defence is not made out. I contend, on this evidence, there has not been proof enough to vacate a contract, to make a will void, or to have put the prisoner under guardianship in the probate office as an insane person; and, therefore, it falls far short of excusing him for his criminal acts. In any other case founded on the prisoner's conduct, as to any other of his acts or deeds, you would not hesitate, under this testimony, to hold him responsible for his actions. Can, then, the mere

statute of the legislature, prescribing *d priori* what shall be the *punishment* of an act, have any lawful or reasonable effect in deciding upon the inferences to be drawn from the evidence as to the state of the prisoner's mind when the act was perpetrated? If this was not a trial for a capital offence, but a mere civil proceeding for an assault and battery, to be atoned for by a pecuniary compensation, (supposing the warden not to have been killed,) would you refuse, on this evidence, to give a verdict that the defendant should pay damages, if he was able? Certainly, the mere *consequences* of an act can have no effect in determining the state of mind of the actor when he did the act; nor can it be said with any justice or truth on any occasion, that if the consequences are to be a pecuniary fine or imprisonment, then the state of mind of the actor was sound; but if the consequences are to be death, then the state of the actor's mind was unsound. This would be making the legislature settle, in many cases, the questions of supposed homicidal insanity; for if they abolish capital punishment by law, then the culprits are to be found of sound mind and responsible for their acts; but if death is still to be awarded as the proper punishment of felonious homicide, then the prisoner is, in all doubtful cases, or cases even of mere suspicion of insanity, to be found of unsound mind, and irresponsible to human tribunals. What a mockery of justice would verdicts be, when they are, upon the same evidence, to be for the government if a mild punishment is to follow, but for the prisoner if a severe punishment is to be the consequence of the verdict! It would be best, if it were practicable, that jurors should not know the consequences of their verdicts. They are engaged in these interesting cases, in a most solemn and highly responsible duty of finding and declaring the truth. Now consequences are held up to them, which frighten them from the path of that duty. The fear of consequences appals them; the mind gets alarmed in the

pursuit of truth ; it fears to find the truth ; it seeks every possible escape to get away from seeing or declaring the awful truth, if it can find any way to ease the conscience, if it can be done and the oath be not violated. But for such alarms, but for the inquietudes which the fear of consequences occasions, the mind, on these interesting occasions, would have clearness to discover the truth and the firmness to declare it ; but the bare possibility of a mistake, even after the judgment has decided the question, sometimes overthrows the decision. Such may be the result of this case ; but all I contend for is, that if upon this evidence a case of insanity would not be made out in favor of the defendant, if it were a mere civil action for damages on a contract, or for an assault and battery, then the public justice suffers if a verdict be found for the prisoner as irresponsible on the ground of insanity, merely because murder is yet punishable by death ; and the appalling consequences thus drive the mind from its propriety, and obliterate the truth.

But before leaving this main question, I ought briefly to consider and reply to some of the remarks and arguments of each of the counsel for the prisoner, notwithstanding much of what they have said having been already sufficiently answered.

First. There is no case cited by the junior counsel, in his very elaborate and extensive quotations, which is like the case at bar, or which proves, by precedent, or analogy, this case to be insanity. As to the monomania arising from supposed false voices, he has cited but four cases, every one of which differs essentially from this case. *Hadfield* said he was commanded by the voice of God to kill his own child, but never said he had heard such a command to kill *the king*. His delusion there proceeded from no false voices, in reference to shooting the king, but from contemplating and reflecting on what he actually heard from the real voice of a fanatical

preacher. *Martin* heard a voice in a dream about York Minster; his case was not one of hearing *false* voices while awake, but voices in no other sense untrue, than those which one supposes he hears, when asleep and dreaming, are false. *Davis's* case was, where a man in a *delirium tremens* said he heard General Washington call out to him, as he rode through the air, to take the life of Edwards without delay. Here was no false voice, but the mere ravings of a delirium, not knowing what it said. The *Prussian farmer's* case was a fanatical imitation of Abraham's offering up Isaac; but we do not know enough of the circumstances of the farmer's disease, its origin, progress or result, to compare it with this case. The quotations cited from Esquirol and Marc are not based on reported cases, and differ materially from each other, thus showing that reliance cannot be placed upon those computations, or such calculations, in judicial tribunals. Now Rogers's case differs from all those Mr. Bemis cited, in this very remarkable particular — Rogers never said or pretended that any false voices *led him* to kill Mr. Lincoln, or that he killed Mr. Lincoln *because* he had heard that Mr. Lincoln intended to shut him up, &c. There is no connection, *from anything he ever said*, between the supposed hallucination and the atrocious deed; and the absence of such connection in his mind shows the cases cited not to be in point, especially as Rogers several times spoke of Mr. Lincoln's being killed. The absence, too, of this connection in Rogers's mind has a strong tendency to show that all you have heard on this subject, the opinions of the medical men and the arguments of counsel, are *after-thoughts*, theories, assumptions, the results of ingenious conjectures after the fact, and not proved by any antecedent or contemporaneous or even subsequent language or declarations of even Rogers himself, who never connected his killing Mr. Lincoln with what Cole or Robinson said, or the popo game, checkerberry, or starvation, or self-

defence. Rogers himself, as far as the evidence goes, never connected the homicidal act with the supposed delusion ; this is the sole work of the doctors and lawyers, their hypothesis resting on conjecture, not on evidence. Now Mr. Bemis himself relies on Erskine's doctrine in Hadfield's case, as sound law. He contends for the application of the test of Mr. Erskine, of *delusion coupled with the act*. But what evidence have you that Rogers coupled the act with any delusion ? Before he did it, when he did it, after he did it, he never justified it *on that ground*, or connected the deed by a single word with any delusion. There is not a particle of evidence, showing that in his mind he acted from a desire of self-defence, necessarily and actually arising from any delusion, or with any reference to the supposed voices, or any belief founded on such supposed voices. And this is very important for your consideration, for you must settle the point, whether this supposed connection is anything more than "fancy's sketch," of conjectural reasoners ; and whether Mr. Erskine's test is not *wholly wanting* in this case.

I think I am justified, under the evidence before you, in saying, also, that you have no proof that, *at the time* of perpetrating the deed, Rogers was under any delusion at all. His general vague fear of punishment, arising from a dream, or the real voices of Cole and Robinson, is no evidence of the dethronement of reason, is no proof of such mental disease as shows incapacity of self-control, or excuses him from criminal responsibility. He acted from memory of the past, not fear of the future ; his act was revenge, not precaution ; and vengeance being gratified, all supposed delusion vanishes forever. The case at bar, then, is not like Hadfield's, McNaughten's, Martin's, Sclafer's, or any of the others cited in the defence ; and the three points for which Mr. Bemis cited them, in hope to make out the same in Rogers's case, are not brought out in this prisoner's case on this evidence, — the

hearing of false voices, the consequent idea of the existence of conspiracies and persecution, making self-defence by bloodshedding necessary, and the possible duration of a paroxysm of insanity; and the *test* which he derives from Mr. Erskine also *wholly* fails him on this occasion.

There is much, also, in Mr. Bigelow's argument, to which the reply is obvious and easy. He admits, if *express malice* is proved, the defence entirely fails; but he attacks Mr. Jaquith, Tully, Mr. Thomas Russell, and Mr. Bean, who, if believed, make out a clear case of express malice. Now it would be marvellous if four witnesses should all be either perjured or mistaken, who have had no ill will towards the prisoner, who have no motive to misstate any fact or circumstance, and who are under the solemn obligations of the law to tell the truth on this solemn occasion. Mr. Jaquith is a respectable and intelligent man, careful and cautious, clear in his recollection, and his belief is founded on knowledge. His mind is free from every shade of doubt. He is not impeached by any evidence. Others not noticing, not hearing, or forgetting some rapid words spoken in such an exciting moment, which astounded all present, is no contradiction of what he, in fact, did hear? and Mr. Jaquith's omission to state this matter before the coroner's inquest in the evening is sufficiently explained by the summary, hurried and incomplete examination common on such occasions. A fortieth part of the testimony given on this trial was not produced before the coroner's jury; is it therefore all untrue? Certainly not. The evidence of Mr. Jaquith was neither vague, uncertain, nor unsatisfactory, but definite, explicit, and entirely convincing, that Rogers used the words *I told you I would*, at the precise moment when the fatal blow was struck; and these words show express malice, indicate no delusion, are words of revenge and exultation, and not of self-

defence. They are in conformity with the threats sworn to by Tully, who is a competent witness, but is also attacked on two grounds, — *first*, because he is a pardoned convict. Complaints of testimony coming from pardoned convicts come with little grace from counsel who themselves have resorted freely to the same source ; who introduced Savary, Burnet, Bradley, and Rocheford, and would have thrust Lauber also on you, though not restored to his competency. This is more than double the quantity of such evidence offered by me. The testimony of the pardoned convicts is *legal* evidence ; and upon such an interesting and solemn inquiry as this is, the light of truth should be received from every admissible quarter, and counsel on both sides are justified in using it. *Secondly*, — Tully is attempted to be impeached by Rocheford, a fellow-convict, but he expressly says that Tully's language was this, — that he never “ heard Rogers make any threats, *more than any body else.*” This is what some lawyers call a *negative pregnant*. Now it is fully in proof that state prisoners frequently threatened the warden. To say, then, that Rogers never threatened the warden *more* than any body else, regards only the *quantum* of threatening ; it admits the fact of threatening, and only excludes a greater degree of menace than others had made. Rocheford's testimony then, in fact, confirms Tully in the very point to be proved, to wit, — some previous threats used by Rogers concerning intended violence to the warden. Besides, Tully could have no motive to falsify. When he first mentioned the threats in conversation with Capt. Robbins, the master, he did not expect to be a witness, nor to be pardoned, nor has he since had any inducement to speak an untruth ; his imprisonment has not been shortened, and no money has been paid to him, even for his fees as a witness ; and he has testified to nothing improbable, and only to facts which other witnesses say were common in the prison. I have before

alluded to the confirmation of Tully's evidence by Warren B. Parker, the language used by Rogers immediately after performing the threat, being the precise language in which the threat was uttered when Tully heard it.

I think Mr. Thomas Russell was harshly used by the prisoner's counsel. They united their talents in confusing him, and then took advantage of his confusion. But he is an honest man, and had much advantage of observation of Rogers. His general character is not impeached. He is in a responsible station, where character and truth are required qualifications. If his testimony is believed, it is conclusive upon the subject of express malice. He was not called on the former trial by me, because he had not volunteered his testimony, or told me what he knew. Had he been prejudiced or vindictive, he would have come forward to me when I was seeking evidence in the prison; he would not have kept silence. He kept back from no improper motive; but the fact of his not coming forward for the government repels the gross charges the prisoner's counsel have made. I have before told you how unfortunate for the commonwealth was Mr. Bradford Sumner's advice to the officers of the prison, to tell nobody what they knew until they came before the court. How were the counsel and the commonwealth to find out what officers knew anything, and what things any of them knew? Had not this advice been given, I do believe the former trial would have been conclusive. But Mr. Russell says he did give Mr. Bemis some intimations of what he knew. I must confess that it did seem to me that by a *lapsus linguæ*, or mistake of the question, the witness did say that he had never told any one before his opinion that Rogers was not insane, and that immediately afterwards he said that he had told Mr. Bemis some time ago, that he did not believe but that Rogers was in his right mind. There was a confusion in his evidence under this accidental circumstance, from which the prisoner's

counsel have endeavored to discredit all his testimony. But this is not right. He may have forgotten when and to whom he had expressed his opinions, and yet those opinions may have been very correct. The language he swears he heard Rogers use in April, shows both the threat of revenge, and the *motive* for it, the very motive the learned gentlemen have both taken so much pains to tell you is not proved in this case. What did Rogers say to Thomas Russell in April? "I have not a great while longer to stay, but *before* I leave *I'll* pay the warden for it. *I should not have got so much additional sentence if it had n't been for him.*" There is another part of Mr. T. Russell's testimony very important, perhaps the whole key of this defence, and of the awkward efforts of Rogers affecting insanity afterwards, and saying that the warden was not dead, that he had seen him Sunday morning, &c. Mr. Russel says, on Sunday morning, when Mr. Dwight prayed with Rogers, he used the expression in his prayer, "that the prisoner might be delivered if he were insane when he did the deed." Upon this Mr. Russell noticed *Rogers's face to flush up, as if he were pleased*. Here probably is the origin of this defence; and Rogers had low cunning enough to catch the idea, and his conduct subsequent to that time seems to demonstrate that some peculiar speeches favoring that notion were adopted by him. If want of motives is of such great consequence in this case, consider that Thomas Russell can have no motive to lie or to perjure himself, in this trial; and if he speaks truth, you have positive evidence of express malice on the part of Rogers towards Mr. Lincoln, and of one of the causes of that malice; and this important testimony is confirmed by what Mr. Jaquith said, and by Tully's evidence, all being entirely consistent and mutually confirming the other.

On this point of *express* malice, very strong testimony still remains to be considered. I allude to Johnson Bean's. He

was a candid witness, a fair man, beyond reproach, and above prejudice. He says, that Rogers said to him that Braman was a rascal, and old Lincoln another — “*that Lincoln would punish him for every little offence, but that he would fix him before his time was out.*” Here also are motives and causes of revenge ; and this is just such a threat as Tully heard him make ; it is such language as he used to Warren B. Parker after the deed, “he had fixed the warden.” Mr. Bean told Mr Lincoln of this threat, and he turned it off as unworthy of notice. Probably Mr. Lincoln had also heard Rogers threaten him to his face, and turned it off in the same way, which may account for Rogers’s boast when he gave the fatal stroke, “I told you I would.” This testimony of Mr. Bean also adds force and credibility to Tully and Russell’s evidence. Here, then, are three separate, distinct, repeated threats, uttered at distinct periods, coming from three witnesses, whose testimony has never before been brought together, or communicated to each other, and all showing a *harbored resentment*, a *settled* purpose of personal revenge for supposed wrongs, often openly avowed, the very characteristics of aforethought, express malice. But Mr. Bean “did not mention it at the first trial.” Well — he explains the reason. He was called to prove a particular fact ; he took the witness’s stand just before an adjournment ; he had never communicated the fact to the commonwealth’s counsel ; he was hastily examined on both sides and suddenly dismissed ; was not interrogated on this point, and had never been a witness in court before. This explanation appears to me entirely satisfactory. In one point it is said, Mr. Bemis contradicts him. I do not admit this ; I think, on the contrary, Mr. Bemis confirms him. As this supposed contradiction comes from so respectable a source, and has been so strongly urged upon your attention by the learned counsel of the prisoner who last addressed you, I request your careful con-

sideration of the testimony of both these witnesses. Mr. Bean swears to threats, and Mr. Bemis's testimony as to Mr. Bean is this — "I am confident Mr. Bean never mentioned to me, at the prison, the threats he has now testified to, *in the same terms* ; according to my notes, he had heard Rogers say, *frequently*, that the warden would suffer for punishing him ; not that he, Rogers, should make him suffer for it." This again, is a negative pregnant. He did not mention the threats *in the same terms* ; but he did mention threats, and that's the question. Did he threaten to hurt Lincoln ? Can any one doubt it. This confirms, not confutes Mr. Bean. On the whole, this *cumulative* evidence of previous threats, and harbored and cherished malevolence, followed up by the cruel act and the diabolic boast of having accomplished the threatened deed, is conclusive proof of *express* malice — and the cause, manner and instrument of effecting his cruel purpose give the fullest evidence of implied malice. In the language of Mr. Bigelow, indeed, "the purpose was dreadful, and the execution of it fiend-like ;" but Mr. Bigelow is mistaken, when he says there were no "expressions of gratified malice or glutted revenge." I consider what he said at the dreadful moment — "I told you I would," — the fatal stroke accompanying the word, and what he said just after the deed was done — "I HAVE fixed the warden" — were both indicative of "gratified malice and glutted revenge ;" and I consider there is no weight in the point urged by Mr. Bigelow, that the threats were some time before their execution, and no threats on that day or a few days before. It would have put Mr. Lincoln on his guard, and the officers on their duty of prevention ; it would have been unsafe, and defeated his project, to have used threats just about that time, and Rogers boasted of being "a smarter man than they took him to be." Besides, malignity sometimes expresses its intentions, and

sometimes conceals them, and the concealment is no proof of its non-existence or discontinuance ; especially at times when disclosure would defeat its purposes. How, therefore, the learned gentleman, who closed for the prisoner, could say, under this strong, corroborated, confirmed and uncontradicted evidence of four witnesses that he felt great joy in the assurance, that there is *nothing* in the testimony which convicts the defendant of having so black a heart as he must have possessed to have committed this fatal act with deliberate and determined malice, I cannot conceive, unless it is to be attributed to that zeal of counsel which is not according to knowledge, and which often blinds the mind from discovering that truth which every body else sees. Where he could get the assurance he professes to feel, and how he can "claim" with confidence your unhesitating acquittal of the prisoner of express malice, upon the testimony before you, I am at a loss to imagine.

He well says, that if the government has satisfied you that there was *express* malice, the case of the prisoner would be at an end. As to *implied* malice, arising from the act itself and the circumstances attending it, he says, this implied malice is *rebutted* by the proof of the *insanity* of the prisoner. I will now therefore notice briefly his argument on this part of the case. Enough has already been said upon the use and the abuse of the plea of insanity, and I pass over Mr. Bigelow's remarks on those topics, nor will I discuss any further the law on this delicate subject. The court will sufficiently enlighten you on the points where the counsel differ. I do not know that I am not sufficiently content with the rule Mr. Bigelow has himself laid down at the close of his discussion of the law. "If you are satisfied that the prisoner, when he committed the homicide, was laboring under a delusion, which overpowered his will, and deprived him of self-control, and that the act was connected with that delusion, he is enti-

bled to a verdict of acquittal." If this rule of law is right, then it is a matter of fact exclusively for your consideration, whether the prisoner's case is proved to be within the rule. Upon this, the parties are at issue. What was the delusion, and what is the evidence on which they rely, to prove its existence and overwhelming influence?

My position is, that there was no delusion that *overpowered the will*. I might safely admit some vague, indefinite apprehension in Rogers of future punishment, or that he was to be confined to the solitary cells for misconduct. This vague notion may have been derived from what Cole and Robinson told him at the blacksmith's shop, or from his dreams, his consciousness of deserving it, or other sources; but it never rose to such a degree as to overpower his will or dethrone his reason. It does not follow that he was insane, because he was under some delusion. What man living is not under some delusion upon some subjects? Are all men, therefore, free from moral and legal restraints; or do they cease to be moral and accountable free agents, because they are somewhat deluded on some points? Where will such a doctrine carry us? If this was true, human societies could not be preserved,—morals, law and religion would be subverted. And after all, this is the main question in this case. Was there any delusion? What was its cause? When did it commence? What was its degree? What was its end? And what were the real, actual consequences of the supposed delusion? The learned gentleman does not state my argument, but raises a man of straw of his own, says it belongs to me, and then proceeds formally to demolish it; a very easy mode of argumentation, and sometimes successful; but it never prevails when the other side makes the jury distinctly understand his own argument. Here is a large mass of facts in evidence before you; and the question is, what is the legitimate and truthful inference to be drawn from those facts?

Our object is, to penetrate the recesses of Abner Rogers's mind, at a particular period. The learned gentleman sees insanity there ; I do not. He enforces his views on you ; I will state mine. You are to take the facts, one by one, and determine who is right. Perhaps you will find that ingenuity can raise a plausible argument on both sides out of these facts ; that is, that there are some facts which seem to support each hypothesis, and some facts which as well support the one side as the other. Hence the difficulty in this case. Let me ask you to view the facts which are credibly proved, or justly inferred from the proof, in connection with my explanation ; and the very statement on my part will answer and refute much of the closing argument, and relieve the prosecution from many of the fancied dilemmas into which the gentleman supposes he has placed it. Suppose, for a moment, this to be a true history of the case, and then consider whether the evidence does not warrant the belief that it is the truth, or, at least, whether every fact relied upon in the defence, as proof of insanity, is not entirely and satisfactorily reconcilable with this statement, and as much so as upon the opposite hypothesis.

Abner Rogers was a lazy, reckless, and wicked person. Mr. Braman was in the habit of reporting him for not doing his work right, and Rogers told Bean that Braman was a rascal, and wanted no better sport than to report him. For frequent violations of the rules he received minor punishments not recorded. He told Bean that Lincoln would punish him for *every* offence, and that Lincoln also was a rascal. Moreover, Rogers had a habit of making noises in the night. This was somewhat of a constitutional failing. His father and relatives say it never was uncommon with him. For these night noises he was liable to be removed into the cells of the old prison, at a distance from the dormitories of the other prisoners, whose repose he disturbed. The noises he made

in the night were occasional only, and it was thought he could and ought to control and check them. The officers threatened to report them. He wished to avoid such reports; he anticipated being punished for them. He attributed his noises to the involuntary effect of his dreams, or his fancy of having heard voices, alarming him for his safety, and even for his life. He sought compassion, commiseration, by these plausible stories, constantly repeated. Savary and Gardiner say his noises were like those made by a man just awakening out of a frightful dream, the common effect of nightmare. Nervous distress is easily mistaken for loss of mind. The appearances resemble each other. These idle stories of hearing Robinson's and Cole's voices, the distressing apprehension of being murdered, &c., were fictions to excite compassion, — excuses to ward off punishment, — not feigned insanity in anticipation of killing the warden. Though a settled, harbored desire of revenge upon the warden existed, manifested by repeated and undisguised threats, yet Rogers had never resolved upon the particular moment or the special means of accomplishing his object. He waited for time and opportunity, without making any particular preparation, and until the most favorable opportunity offered never fixed the time of doing the deed, and never probably would have attempted it then, unless his passions had been excited by that day's showering. His whole conduct was altered after that day's punishment. He was passionate in his cell, refractory in coming out of it, and in the work-shop restless, and wanted to leave the shop; went often and needlessly to the blacksmith's shop and down to Braman's apartment; he was evidently seeking the warden; stood at the blacksmith's door and looked into the yard, was told the warden was coming soon, and betrayed the agitation common to men who are on the point of gratifying their revenge by a desperate and overwhelming atrocity. The warden came into the

shop; was seen and watched by Rogers; the favorable opportunity offered, the means were at hand, the passions prompted the attempt, the long-threatened vengeance seized the fatal moment, and the exulting declaration, *I told you I would*, entered the ears of the victim while the cold steel by repeated thrusts entered his body, and cut his throat. But why, it is asked, do so feloniously an act in presence of so many witnesses, and with such certainty of detection and with no possibility of escape? Why not wait until a secret opportunity occurred after his imprisonment was over and he was out of the prison? Ah! in reply it must be asked, was passion ever reasonable or prudent? Is not revenge sweet, to some sweeter than life, and often reckless as to consequences? Was life itself of any value to Abner Rogers? Let us take his own words; "I have fixed the warden, and will have a rope about my own neck to-night." The gratification of his vengeance was dearer to him than his life. What did he say of Watts, and his suicide? "He was *a fool* he did not kill the warden before he killed himself." Rogers did not mean to be such a fool; he effects the murder of the warden before he attempts to destroy himself. Suicide is to follow murder, and that very night too, if practicable. He was not ashamed of the deed of death. He did not want to escape. He expected to be hung, and was willing. He said to Mr. Fogg, "No mortal could save him from hanging, for it would never do to overlook his offence, the warden's office was so responsible an one." At first, he believed he should be executed, not thinking of self-defence or insanity. But if you believe Thomas Russell, a ray of hope darted into his mind when he heard Mr. Dwight pray that he might be saved *if he was insane*. After that he said the warden was alive, he had seen him that day, and he put on some awkward but inconstant affectations of insanity, soon given up, however, probably by his despairing that anybody could be convinced by his non-

sense and foolish talk. He pretended, that on the night of the 20th June he thought he heard Mr. Bemis and the governor coming to take him out of the prison. There were other things in his conduct and speech, which at times had the appearance of feigned insanity, but they were soon abandoned, and from that time to this he has not been sick in body or mind. His pulse subsided, and his behavior has been like that of other persons in Leverett street jail. Dr. Walker rightly estimated his bodily and mental condition, and subsequent facts have proved the accuracy of Dr. Walker's judgment.

Now, for argument's sake, suppose this narrative to be the exact truth, and my inquiry of you is, whether every fact relied upon by Mr. Bigelow as proof of insanity is not entirely and obviously reconcilable with this statement of a desire to escape punishment, and also to inflict revenge ; and whether those facts given in evidence may not as plainly be accounted for upon the hypothesis and presumptions of his sanity as of his supposed insanity ? If so, then the presumptions of law, the presumptions of his being of sound mind, are not overthrown by such evidence, and will stand to govern your decision. I shall very rapidly pass over the particular facts Mr. Bigelow relied upon at such length. I do not intend to omit any of them.

He said, Rogers would not select his lonely cell and the night time to affect insanity ; and its breaking out then and there was proof of its reality. The answer is, that he made no selection, it was a mere dream, nightmare, or those constitutional noises he occasionally made in the night, and the evidence supports this hypothesis *more* than the other. It was no affectation of noise, no feigned affright, but the common effect of distress in sleep. Then the appearance of fright, agitation, trembling, alarm, all are common to those who have been disturbed by night visions of the horrible kind ; every

one has known such instances in their friends without suspecting them of insanity, real or feigned. So the increase of them from Monday to Thursday, is accounted for by the punishment so constantly following the night noises. The tears and prayers on Thursday afternoon may as readily be ascribed to his roused passions after the showering, as to any other cause; the meditating such a cruel act naturally agitating the mind and affecting the feelings. And there is no such impossibility in these things being the result of pretence; more artful things than these have been done by those who have long deceived others. As to the supposed absence of motives of revenge, the learned gentleman certainly forgot or purposely omitted a great deal of evidence on this head, to which I have already directed your attention; and I have answered what was said upon the certainty of detection and the hopelessness of escape. It is said the deed was done in the daytime; certainly, because there was no opportunity in the night. And that there was no accomplice. Is an accomplice necessary to prove whether a man is sane or insane? Is the presence or want of an accomplice in crime any criterion of insanity? But he was to be discharged shortly, in two months. Therefore he might afterwards never have the chance to do the deed; and, besides, he repeatedly threatened he would do it *before* he left the prison. As to escape, he did not desire it; his own life was of no value to him in comparison with the gratification of revenge. But there was no punishment before Monday, when these appearances began. It was not an *appearance* on Monday, but a reality, a horrid dream; there was no affectation in that, and I have always said so. Also it is said, if he had a motive, and contemplated the act, he would have provided an instrument. The answer is, dangerous weapons were always at hand. *Malitia supplet arma*. But he could not conceal weapons without detection, which would defeat his purpose. Also, he could not devise

beforehand when he should have an opportunity to do the deed. I have already said his own knife was not so good for the assassination as Reed's longest knife ; and Mr. Bigelow's argument, on this head, is refuted by the fact, and the exhibition of the knives. Then the argument derived from the opinions of the officers of the prison ; the balance of testimony is on our side. We have the warden himself, the deputy-warden Payne, Fogg, Russell, Bean, Dr. Walker, and others, against Crowninshield, Sargent, Savary, &c. Our witnesses had had most experience in such cases ; their witnesses, excepting the medical testimony and Dr. Dwight, little or no experience in such cases. Then it is confidently argued that feigned insanity always follows and never precedes the homicidal act. We say that that is just this case. We never contended that the previous pretences were for any other purpose than for warding off punishment for the noises ; and we now contend, upon Thomas Russell's testimony, that Rogers first caught the idea of being saved by insanity from the expressions used by Mr. Dwight in his prayer. As to the admissions to Patterson and others by Rogers, that all his nonsense about hearing the voices of Cole and Robinson was mere imagination, certainly they are quite as reconcilable with our hypothesis, and that he knew he had been lying, as they are proof of any insanity on his part. And it is asked, if Rogers could wish to deceive his fellow-prisoners ? A plain answer is, yes ; for they have often considerable influence upon the warden in imposing, or relieving from, punishment. He did not talk with them with a view to have them witnesses in court, but to have them appealed to or inquired of, if necessary, by the officers or warden. The argument derived from the fact of his going to Dr. Walker Thursday morning, to get into the hospital, is based on the fallacy that he had then fixed upon committing the deed, that day, or afternoon, or week, which he had no idea of doing then ; and he con-

ceived the idea of doing it that day, only after he got into such a passion for being punished and showered at twelve o'clock that day. So, also, there is no weight in the argument, that he would overact his part before Dr. Walker. He knew Dr. Walker too well, and he had no occasion to feign insanity before him at nine o'clock that morning. But it is also said that his calmness after the act, and not pretending insanity immediately after the deed, nor in Leverett street jail, and not now also before you, — are circumstances showing he was really insane when he did the felonious act. I do not see why this freedom from insanity after the deed does not as well support our theory, that he never was insane, as the other hypothesis. Besides, after Mr. Dwight's prayer, *there was* some affectation, as I have before stated. Then the gentleman relies on sleeplessness, and a rapid pulse. As to the pulse, it is no criterion of insanity. He had excitement enough, before and after the deed, to keep his mind agitated and his pulse high — and the pulse is affected by so many secret causes ! That he did not sleep much, depends on his own declaration, which cannot be relied upon ; there is no other proof. He seemed to have awakened from sleep when Savary and Gardiner visited him, and once when Dr. Bell visited him. The counsel and the medical men say that this form of insanity, hearing false voices, &c., is not common, seldom or never feigned, and not likely to be known or attempted by so illiterate and ignorant a person as Rogers. I answer, all this is true, and Rogers did not pretend to be insane, or feign this form of insanity. He had a dream at one or more times — at others, he actually did hear Cole and Robinson say such and such things, and these things were alluded to by him, not as evidence of his being insane, but as excuses to avoid the punishment for making the noises, &c. to excite commiseration, and prevent the officers from reproving him. Then self-pollution is relied upon as proof of

his insanity. The answer is, that generally, it is only a predisposing cause — and further, that when insanity is produced by that cause, it continues long, and seldom or never is cured all at once by a sudden outbreak and homicidal act. Lastly, I come to the medical opinions. I do not think Dr. Walker has been fairly treated by the counsel, by Mr. Dwight, nor by Dr. Bell. I think Mr. Dwight and Dr. Bell should both have consulted Dr. Walker, and not go into his department, visit one of his patients, and carry on so important an examination and investigation as this without his knowledge, or speaking to him on the subject. I thought professional comity or courtesy would have induced Dr. Bell to have mentioned to Dr. Walker what his object was, and to make some inquiries about Rogers of him, who had known him for so many years. I am still unable to see why this examination was so secret between the two friends, Dr. Bell and Mr. Dwight. It has the semblance of taking a side against the physician of the institution without reason, who has had so much experience, and stands so high in his profession, and whose intercourse with Rogers for such a series of years, gave him the means of being so useful to persons really desirous of discovering the truth on such an interesting occasion. I think the counsel have been unnecessarily severe upon Dr. Walker, and undertaken to judge of him in matters upon which he is far better a judge than either of them. It is also triumphantly asked why I have not called other physicians, and ask them to attend this whole trial, and then give their opinions in opposition to Dr. Bell's and Dr. Woodward's. I answer, that at the former trial, I was wholly surprised by their evidence, which had never been disclosed to me, and after they had expressed their opinions, which were spread through the community in the printed newspaper reports, it would be no easy matter to find a doctor willing to volunteer to place himself in the odious position of antagonists to gen-

tlements of such high eminence, however much he differed in opinion from them ; and I have reason to believe such difference of opinion in truth exists among the profession. Besides, I had for the government that medical officer charged with the care of the institution, who knew Rogers well *before* the deed was committed, and who had had experience both in cases of real and of affected insanity, and I thought, and still think, *his* opinion worth more than that of all those who knew nothing of Rogers until after he had committed this flagrant murder, and whose opinions even now are based in part upon testimony coming from such polluted sources as Savary, Bradley and Burnet, for even Drs. Bell, Woodward and Ray all say, that now supposing *all* the evidence given at the trial to be true, then their opinion is such as they have expressed. If part of the foundation fails, no great reliance can be placed upon the residue of the edifice.

These are all the facts and circumstances commented and relied upon by the prisoner's counsel, not before specially noticed and answered by me. And now recurs the question, is there anything in any of them irreconcilable with the fact of Abner Rogers being of sound mind, and prompted by human resentment? In other words, is there conclusive proof that when the fatal deed was done his reason was overthrown, his moral sense ruined, his self-control annihilated, his impulse irresistible, his delusion overpowering, and his consciousness of right and wrong nullified? I maintain there is not any satisfactory proof of any delusion on his mind at that tragic moment; it is mere conjecture, theory, supposition; and even if there were *some* delusion, there is not any proof that it was strong or overwhelming, or that it produced an irrepressible impulse for self-defence; that too rests in theory and conjecture, a gratuitous hypothesis; and lastly, there is no proof that Rogers himself ever connected in his own mind the cruel act and the supposed delusion; he never

uttered a word signifying any such connection ; he never pretended that he killed the warden to save his own life. This too, the supposed connection between the delusion and the act, is the work of conjecture, the after-thought of misplaced benevolence and professional ingenuity ; so that taking the rule of law to be as the learned counsel of the prisoner laid it down, the evidence laid before you in this case does not bring their client within its protection, and the burden of proof is on them.

The *implied* malice, then, is not rebutted by proof of insanity, and of course gives character to the homicide ; it is wilful murder.

If there was express malice, the prisoner is guilty.

If there was implied malice, the prisoner is guilty.

If irresistible and unconscious insanity is not proved beyond a doubt, the prisoner is guilty.

And such is the conclusion of this important trial ; the government's case is proved ; the defence fails on the testimony laid before you.

But before I close, I must say that you are to consider if the court so instruct you, that if a partial insanity is proved, but the prisoner might have restrained his impulse, whether malice being rebutted by the delusion, this homicide may not yet be manslaughter. I shall not argue this, but refer you to the instructions of the court, who are familiar with the law in this particular.

And now, gentlemen, I commit this important cause to your decision ; I have gone over all the ground I proposed ; it is of the highest importance to the prisoner, of the greatest importance to the public, and of very great importance to yourselves, who are under the most sacred obligations of returning to this court the words of truth and justice in your verdict. Your position is responsible, your duty arduous ; let your action be such as your judgment will now and hereafter approve, and your conscience never condemn.

SATURDAY MORNING, the court came in at nine o'clock, and the CHIEF JUSTICE proceeded to charge the jury. He commenced by some preliminary remarks to the following effect :

The great object of punishment by law is to afford security to the community against crimes, by punishing those who violate the laws ; and this object is accomplished by holding out the fear of punishment, as the certain consequence of such violation. Its effect is to present to the minds of those who are tempted to commit crime, in order to some present gratification, a strong counteracting motive, in the fear of punishment.

But this object can only be accomplished when such motive acts on an intelligent being, capable of remembering that the act about to be committed is wrong, contrary to duty, and such, as in any well-ordered society, would subject the offender to punishment. It might, in some respects, be more accurate to say, that the party thus acting under a temptation, must have memory and intelligence, to recollect and know that the act he is about to commit is a violation of the law of the land. But this mode of stating the rule might lead to a mistake of another kind, inasmuch as it would seem to hold up the idea, that before a man can be justly punished, it must appear that he knew that the act was contrary to the law of the land. But the law assumes that every man has knowledge of the laws prohibiting crimes ; an assumption not strictly true in fact, but necessary to the security of society, and sufficiently near the truth for practical purposes. It is expressed by the well known maxim, *ignorantia legis neminem excusat*, — ignorance of the law cannot be pleaded as an excuse for crime. The law assumes the existence of the power of conscience in all persons of ordinary intelligence ; a capacity, to distinguish between right and wrong, in reference to particular actions ; a sense of duty and of right. It may also be safely assumed, that every man

of ordinary intelligence knows that the laws of society are so framed and administered, as to prohibit and punish wrong acts, violations of duty towards others, by penalties in some measure adapted to the nature and aggravation of the wrong and injurious acts thus done. If therefore it happens to be true in any particular case, that a person tempted to commit a crime, does not know that the particular act is contrary to positive law, or what precise punishment the municipal law annexes to such act; yet if the act is palpably wrong in itself, if it be manifestly injurious to the rights of another, as by destroying his life, maiming his person, taking away his property, breaking into or burning his dwelling-house, and the like, there is no injustice in assuming that every man knows that such acts are wrong, and must subject him to punishment by law; and therefore it may be assumed, for all practical purposes, and without injustice, that he knows the act is contrary to law. This is the ground upon which the rule has been usually laid down by judges, when the question is, whether a person has sufficient mental capacity to be amenable for the commission of a crime; that he must have sufficient mental capacity to distinguish between right and wrong, as applied to the act he is about to commit, and to be conscious that the act is wrong; instead of saying that he must have sufficient capacity to know that it is contrary to the law of the land: because this power to distinguish between right and wrong, as applied to the particular act, — a power which every human being, who is at the same time a moral agent, and a subject of civil government, is assumed to possess, — is the medium by which the law assumes that he knows that the same act which is a violation of high moral duty, is also a violation of the law of the land. Whereas, if it were stated that a person must have sufficient mental capacity to know and understand that the act he is about committing is a violation of the law of the land, it might lead to a wrong conclu-

sion, and raise a doubt in regard to persons ignorant of the law. There is no doubt that many a man is held responsible for crime, and that, rightfully, who might not know that the act he was about committing was contrary to the law of the land, otherwise than as a moral being he knows that it is wrong, a violation of the dictates of his own natural sense of right and wrong.

To recur, then, to what has been already stated: In order that punishment may operate by way of example, to deter others from committing criminal acts, when under temptation to do so, by presenting a strong counteracting motive, the person tempted must have memory and intelligence, to know that the act he is about to commit is wrong, to remember and understand, that if he commits the act, he will be subject to the punishment, and reason and will, to enable him to compare and choose between the supposed advantage or gratification to be obtained by the criminal act, and the immunity from punishment which he will secure by abstaining from it.

A person, therefore, in order to be punishable by law, or in order that his punishment by law, may operate as an example to deter others from committing criminal acts, under like circumstances, must have sufficient memory, intelligence, reason and will, to enable him to distinguish between right and wrong, in regard to the particular act about to be done, to know and understand that it will be wrong, and that he will deserve punishment by committing it.

This is necessary on two grounds:

- 1st. To render it *just* and reasonable to inflict the punishment on the accused individual, and
- 2d. To render his punishment by way of example, of any utility to deter others in like situation, from doing similar acts, by holding up a counteracting motive in the dread of punishment, which they can feel and comprehend.

With more immediate reference to the case, the Chief Justice proceeded as follows :

In order to constitute a crime, a man must have intelligence and capacity enough to have a criminal intent and purpose ; and if his reason and mental powers are either so deficient that he has no will, no conscience or controlling mental power, or if through the overwhelming violence of mental disease his intellectual power is for the time obliterated, he is not a responsible moral agent, and is not punishable for criminal acts.

But these are extremes easily distinguished, and not to be mistaken. The difficulty lies between these extremes, in the cases of partial insanity, where the mind may be clouded and weakened, but not incapable of remembering, reasoning and judging, or so perverted by insane delusion, as to act under false impressions and influences. In these cases, the rule of law, as we understand it, is this ; a man is not to be excused from responsibility if he has capacity and reason sufficient to enable him to distinguish between right and wrong, as to the particular act he is then doing, a knowledge and consciousness that the act he is doing is wrong and criminal, and will subject him to punishment. In order to be responsible he must have sufficient power of memory to recollect the relation in which he stands to others, and in which others stand to him ; that the act he is doing is contrary to the plain dictates of justice and right, injurious to others, and a violation of the dictates of duty.

On the contrary, although he may be laboring under partial insanity, if he still understands the nature and character of his act and its consequences, if he has a knowledge that it is wrong and criminal, and a mental power sufficient to apply that knowledge to his own case, and to know that if he does the act he will do wrong and receive punishment, such partial

insanity is not sufficient to exempt him from responsibility for criminal acts.

If then it is proved to the satisfaction of the jury, that the mind of the accused was in a diseased and unsound state, the question will be, whether the disease existed to so high a degree, that for the time being, it overwhelmed the reason, conscience and judgment, and whether the prisoner in committing the homicide acted from an irresistible and uncontrollable impulse ; if so, then the act was not the act of a voluntary agent, but the involuntary act of the body without the concurrence of a mind directing it.

The character of the mental disease relied upon to excuse the accused in this case, is partial insanity, consisting of *melancholy*, accompanied by delusion. The conduct may be in many respects regular, the mind acute, and the conduct apparently governed by rules of propriety, and at the same time there may be insane delusion by which the mind is perverted. The most common of these cases is that of monomania, when the mind broods over *one idea* and cannot be reasoned out of it. This may operate as an excuse for a criminal act in one of two modes— Either the delusion is such that the person under its influence has a real and firm belief of some fact, not true in itself, but which if it were true, would excuse his act ; as where the belief is, that the party killed had an immediate design upon his life, and under that belief the insane man killed him in supposed self-defence. A common instance is where he fully believes that the act he is doing is done by the immediate command of God, and he acts under the delusive but sincere belief that what he is doing is by the command of a superior power, which supersedes all human laws, and the laws of nature : or

2d. This state of delusion indicates to an experienced person that the mind is in a diseased state, that the known tendency of that diseased state of the mind, is to break out into

sudden paroxysms of violence, venting itself in acts of homicide, or other violent acts towards friend or foe indiscriminately, so that although there were no previous indications of violence, yet the subsequent act, connecting itself with the previous symptoms and indications, will enable an experienced person to say, that the outbreak was of such a character, that for the time being it must have overborne memory and reason ; that the act was the result of the disease and not of a mind capable of choosing ; in short, that it was the result of uncontrollable impulse, and not of a person acted upon by motives and governed by the will.

The questions, then, in the present case, will be these :

1. Was there such a delusion and hallucination ?
2. Did the accused act under a false but sincere belief that the warden had a design to shut him up, and under that pretext, destroy his life, and did he take this means to prevent it ?
3. Are the facts of such a character, taken in connection with the opinions of the professional witnesses, as to induce the jury to believe that the accused had been laboring for several days under monomania, attended with delusion ; and did this indicate such a diseased state of the mind that the act of killing the warden was to be considered as an outbreak or paroxysm of disease, which for the time being, overwhelmed and suspended reason and judgment, so that the accused was not an accountable agent ?

If such was the case, the accused is entitled to an acquittal ; otherwise, as the evidence proves the fact of killing beyond all doubt, without provocation, by the use of a deadly weapon, and attended with circumstances, of violence, cruelty, and barbarity, he must undoubtedly be convicted of wilful murder.

The Chief Justice then proceeded to sum up the case, and apply the rules and principles to the various facts and circumstances disclosed in the evidence. In the course of the

charge, and in the analysis of the evidence, the Chief Justice made some remarks upon the nature of the testimony of medical witnesses to the following effect.

The opinions of professional men, on a question of this description, are competent evidence, and in many cases are entitled to great consideration and respect. The rule of law, on which this proof of the opinion of witnesses, who know nothing of the actual facts of the case, is founded, is not peculiar to medical testimony, but is a general rule, applicable to all cases, where the question is one depending on skill and science, in any peculiar department. In general, it is the opinion of the jury which is to govern, and this is to be formed upon the proof of facts laid before them. But some questions lie beyond the scope of the observation and experience of men in general, but are quite within the observation and experience of those whose peculiar pursuits and profession have brought that class of facts frequently and habitually under their consideration. Shipmasters and seamen have peculiar means of acquiring knowledge and experience in whatever relates to seamanship and nautical skill. When, therefore, a question arises in a court of justice, upon that subject, and certain facts are proved by other witnesses, a shipmaster may be asked his opinion as to the character of such acts. The same is true in regard to any question of science, because persons conversant with such science have peculiar means, from a larger and more exact observation, and long experience in such department of science, of drawing correct inferences from certain facts, either observed by themselves, or testified to by other witnesses. A familiar instance of the application of this principle occurs very often in cases of homicide, when upon certain facts being testified to, by other witnesses, medical persons are asked, whether, in their opinion, a particular wound described would be an adequate cause, or whether such wound was, in their opinion, the actual cause of death, in the partic-

ular case. Such question is commonly asked without objection; and the judicial proof of the fact of killing often depends wholly or mainly upon such testing of opinion. It is upon this ground, that the opinions of witnesses, who have long been conversant with insanity in its various forms, and who have had the care and superintendence of insane persons, are received as competent evidence, even though they have not had opportunity to examine the particular patient, and observe the symptoms and indications of disease, at the time of its supposed existence. It is designed to aid the judgment of the jury, in regard to the influence and effect of certain facts, which lie out of the observation and experience of persons in general. And such opinions, when they come from persons of great experience, and in whose correctness and sobriety of judgment just confidence can be had, is of great weight, and deserves the respectful consideration of a jury. But the opinion of a medical man of small experience, or of one who has crude and visionary notions, or who has some favorite theory to support, is entitled to very little consideration. The value of such testimony will depend mainly upon the experience, fidelity, and impartiality of the witness who gives it.

One caution, in regard to this point, it is proper to add. Even when the medical, or other professional witnesses, have attended the whole trial, and heard the testimony of the other witnesses, as to the facts and circumstances of the case, they are not to judge of the credit of the witnesses, or of the truth of the facts thus testified by others. It is for the jury to decide whether such facts are satisfactorily proved. And the proper question to be put to the professional witnesses is this: If the symptoms and indications testified to by other witnesses are proved, and if the jury are satisfied of the truth of them, whether, in their opinion, the party was insane, and what was the nature and character of that insanity; what state of mind

did they indicate ; and what they would expect would be the conduct of such a person, in any supposed circumstances ?

In the course of his directions to the jury, the Chief Justice further stated, that the ordinary presumption is, that a man is of sound mind, until the contrary appears ; and, in order to shield one from criminal responsibility, that presumption must be rebutted by proof of the contrary, satisfactory to the jury. Such proof may arise, either out of the evidence offered by the prosecutor to establish the case against the accused, or by distinct evidence, offered on his part. In either case, it must be sufficient to establish the fact of insanity, otherwise the presumption will stand.

The Chief Justice having concluded his charge at half past eleven o'clock, the jury retired, and at half past three, P. M., came in to ask further instructions upon the two questions, —

“ Must the jury be satisfied beyond a doubt, of the insanity of the prisoner, to entitle him to an acquittal ? ”

“ And, what degree of insanity will amount to a justification of the offence ? ”

On the first point, the Chief Justice repeated his foregoing remarks upon the same head ; and added, that if the preponderance of the evidence were in favor of his insanity — if its bearing and leaning, as a whole, inclined that way — they would be authorized to find him insane.

On the second point, he added nothing material to the statement of law already made.

The jury again retired, and at half past four brought in a verdict of “ NOT GUILTY BY REASON OF INSANITY.”

The verdict was received with loud applause from the spectators, which was immediately checked.

The court having inquired of the prisoner's counsel if they proposed to offer further testimony upon his present state of sanity, and being informed that it was the prisoner's own wish

to be sent to the State Lunatic Hospital, stated that they were satisfied, from the opinions already expressed by the medical witnesses, that it would not be safe to do otherwise than order his commitment, as a person dangerous to go at large ; and accordingly directed his confinement in the State Lunatic Hospital at Worcester.

APPENDIX.

SOME weeks after the trial, and when the Preface and most of the Report was printed, we learned of Rogers's death, by suicide, at the Hospital. The newspaper accounts represented that he suddenly bolted through a window in the second story, head first, and was taken up senseless, after a fall of twelve or fourteen feet. The act was said to be so instantaneous, that he was only seen as his feet were going out of the window, as if in the act of diving, and the noise made by it was mistaken by those sitting near for the report of a pistol or gun. Dr. Woodward, the superintendent, being absent at the time, we thought authentic particulars of the unhappy patient's state of mind, during his stay at the hospital and at the time of his suicide, of sufficient importance to delay the publication of the trial till they could be added. Accordingly, on Dr. Woodward's return, we addressed him the following note.

BOSTON, July 12, 1844.

DEAR SIR,

Having learned of the death of Abner Rogers, Jr. at the State Lunatic Hospital, since the commencement of the publication of his trial, and believing that the circumstances accompanying his suicide will probably tend to throw light upon the question of his sanity, at the time of his homicide of Mr. Lincoln, will you do us the favor to communicate an account of that event, and also any particulars relative to his state of mind and physical condition,

while under your care, which you think will prove interesting in the history of his case? Will you be so good, also, as to state whether you have seen any reason to change, or, on the other hand, have been more strongly confirmed in the opinion which you expressed upon the trial, in regard to his insanity?

As early an answer as your engagements will permit, will oblige us, as we have thought this account so important, as to delay our publication, till you could furnish it upon your return.

We are, very respectfully, your obedient servants,

GEORGE T. BIGELOW,
GEORGE BEMIS.

SAMUEL B. WOODWARD, M. D.

Superintend't of Mass. Lunatic Hospital.

In reply to this, Dr. Woodward wrote as follows:—

STATE LUNATIC HOSPITAL, }
Worcester, July 17, 1844. }

GENTLEMEN,

Your letter of the 12th instant came to me to day, on my return from a journey of ten weeks. Rogers's death took place while I was absent. Before I left, he had worked at mattress-making most of the time, and seemed pleased with his work. When he came to the hospital he was not quite well, had a frequent pulse, and suffered from restlessness and want of sleep. I counted his pulse repeatedly for some days; always found it over 100 per minute; once, 102; once, 104. He was rather pale, and looked anxious. These examinations were made on the 5th, 6th, and 8th of February, and are noted on our record of his case. On the 30th of March, and a few days after, he had another turn of sleeplessness. He complained of headache, vertigo, and loss of appetite. He looked ill, and was quite irritable; and though pleasant, was perhaps somewhat suspicious. This turn passed off, and he appeared as well as before; worked steadily every day, and seemed to enjoy himself, and feel satisfied with his place; but talked some with the

patients with whom he was associated about going away. I left for the south on the 7th of May. At this time he appeared as well as usual, was cheerful and steady at work, attended prayers every evening, and religious worship on the Sabbath, and was calm and attentive at both. About the 15th of May he was again excited, had headache, frequent pulse, furred tongue, and bad taste in his mouth, which he attributed to bad food. He told an associate that the food offered him was a corpse: he could smell it. He was restless and suspicious for some days, and apprehended that there was an intention of poisoning him. He took physic, but made a successful effort to throw it up, saying that he was told there was oil of vitriol in it. He ate little, and did not work much the week of his death; said that he saw evil spirits in his room, and smelt corpses under his bed. His suspicion that he was to be poisoned or injured in some way, became quite strong, and was increased by these delusions, which now seemed to get firm hold of his mind. He did not sleep from fear, believing that constant vigilance was his only security. During this time he looked ill, appeared anxious and distressed. He talked a good deal, and although jealous of those around him, he was pleasant, and manifested no desire to injure himself or others. He desired to go to prayers the night he made the fatal plunge, and was not particularly uneasy till the services were nearly closed. He asked an officer near him to go out with him; that is, to his own room. He told him the service was nearly ended. He then applied to his attendant, who also told him the same. He said to a patient near him, in a whisper, that the room was full of dead bodies. He appeared greatly agitated and apprehensive. He was not probably conscious of anything after the leap, till his death, thirty-six hours after. While at work in the shop, some days before his death, he appeared uneasy and suspicious, and looked wild and excited. He stepped into an adjoining shop, looked about anxiously, and returned to his work without speaking. During this week he appeared much as he did the week previous to the homicide.

I have no idea that Rogers intended to commit suicide. His only object was to escape from dangers, which then seemed to

cluster around him. He probably acted from impulse, and as is usual in such cases, was wholly regardless of the consequences of his movements at the time. He stated to the officers, repeatedly, that he should live but a few days, and wished that proper attention should be given to his burial, and his friends notified of his death. After his death, some circumstances came to our knowledge which lead us to suppose that he had thought of attempting to escape; but, as far as is known, he made no such attempt.

Whoever heard the testimony on the trial of Rogers must see that there was a marked coincidence in his conduct immediately before the homicide and occasionally for many years previous, and after he came to the hospital; especially the week previous to the fatal leap. These facts and his general appearance while under my care, confirm the opinion expressed on the trial, that Rogers was *insane* and *irresponsible* when he committed the homicide, and when he made the fatal rush which terminated his life.

In great haste, yours, very truly,

S. B. WOODWARD.

GEORGE T. BIGELOW and GEORGE BEMIS, ESQs.
Boston.

INDEX.

Indictment, 5.

Arraignment and assignment of counsel, 7, 8.

Notice of first trial and commencement of second, 8.

Decision on right of challenge, 9.

Jury, 9.

Opening Address of Mr. Parker, 10-24.

Government Testimony.

Dr. William J. Walker, 25, 30.

Moses Jaquith, 25.

John P. Reed, 27.

Henry K. Frothingham, 30, 34, 148.

Warren B. Parker, 34, 148.

Hiram Fogg, 34.

Joseph Tully, 39, 166.

Galen Holmes, Nathaniel Coolidge, Isaac A. Coolidge, 40, 41.

Mr. Bemis's Opening for the Defence, 41-108.

Testimony for the Prisoner.

David Sargent, 108.

James M. Gardiner, 113.

Abraham W. Crowninshield, 117.

George H. Savary, 121.

William Burnett, 126.

James H. Bradley, 127.

Ebenezer Payne, 130.

Baylies Braman, 131.

Lucius Patterson, 135.

Bernard Lauber rejected. (Argument and decision upon his competency,) 136.

INDEX.

Louis Dwight, 137.
Abner Rogers, Sen., 142.
(Decision of proof of ancestor's insanity by reputation,) 144.
Eliza Pilsbury, Jonathan Randall, 145.
Herman D. Rogers, 146.
Henry Rocheford, 148.
Dr. Luther V. Bell, 149.
Dr. Samuel B. Woodward, 160.
Dr. Isaac Ray, 162.

Government's Evidence, again.

Joseph Tully, George H. Clarke, 166.
Daniel Russell, 167.
Thomas Russell, 168.
Ebenezer Bent, 171.
Johnson Bean, 171.

Evidence for Defence, again.

Mr. Bemis, as witness, 173.

Mr. Bigelow's closing argument, 174-223.
Mr. Parker's closing argument, 223-273.
Charge of Chief Justice Shaw, (Law,) 273-281.
Further Instructions to the Jury, 281.
Verdict and Commitment to State Lunatic Hospital.

Appendix.

Death of Rogers, 283.
Letter from Dr. Woodward on his case and death, 284.



